NEW JERSEY TASK FORCE
ON THE ECONOMIC DEVELOPMENT
AUTHORITY'S TAX INCENTIVES

PUBIC HEARING
Trenton, New York
March 28, 2019

B E F O R E :

PROFESSOR RONALD CHEN
JIM WALDEN, ESQ.
MILT WILLIAMS, ESQ.
GEORGIA WINSTON, ESQ.
AVNI PATEL, ESQ.
PABLO QUIÑONES, ESQ.

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. 158413

March 28, 2019
10:00 a.m.

Public Hearing, held at the War Memorial, Trenton, New Jersey, before Mary F. Bowman, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public of the State of New Jersey.

MR. CHEN: Good morning, everyone. My name is Ronald Chen. I'm a law professor at Rutgers Law School. I want to welcome you all to the first public hearing held by the New Jersey Task Force on the Economic Development Authority's Tax Incentives and also welcome to the many people who are watching this through live streaming across the state.

On January 24, 2019, Governor Philip Murphy issued Executive Order 52 which established this task force. I have been honored to have been appointed to lead the task force and carry out its mission, conduct an in-depth examination of the design, implementation and oversight of two tax incentive programs.

Before I explain our mission and goals, let me introduce the members of my team. I am assisted in this task by my special counsel, law firm of Walden Macht & Haran, a law firm with deep

experience in conducting investigations. Jim Walden, to my left, your right, is leading the team and is being assisted by Georgia Winston, by Milt Williams and Avni Patel. We also have Pablo Quinones of Quinones Law, a firm with expertise in fraud investigations and corporate compliance matters.

Let me now explain why we are here. In 2013, the legislature enacted the New Jersey Economic Development Opportunity Act, which dramatically increased the state's tax incentive programs designed to encourage businesses to engage in economic development, job creation and the preservation of existing jobs within New Jersey.

Two existing programs in particular were given significant new resources by that legislation, the Grow New Jersey program and the Economic Redevelopment and Growth program which

we usually refer to by its acronym E-R-G, or ERG.

In very simple terms, the programs can help a company reduce its corporate taxes if it, A, moves jobs to New Jersey; B, cancels its plans to move jobs out of New Jersey; or C, makes capital investments in certain areas of New Jersey known as Garden State Growth Zones. The Garden State Growth Zone is defined in the legislation as the four New Jersey cities with the lowest median family income based on figures from the U.S. Census, which right now are the cities of Camden, Trenton, Passaic and Patterson.

If a company's yearly tax liabilities are less than their tax incentive award, they actually get a check from the Treasury. So tax exemption is very much like money. And the legislation even allows a company to sell its tax exemption award to

Proceedings - Opening Statement

another company at a slight discount.

The state agency that oversees these programs is called the Economic Development Authority. For shorthand, I will call this the EDA, as we are speaking. As you can imagine, it is a very important gatekeeper and in some ways it acts like the police department over the tax incentive programs.

Now, let me make this clear at the outset. Most of the companies that apply for these tax breaks, I assume, do so honestly and at least believe that they are eligible for them. But that does not mean that we can or should just trust them without verifying the information they give us. After all, in just three weeks we are all going to file tax returns. Most taxpayers are honest, but we know that the IRS doesn't just take our word for it.

So I doubt it will surprise you to learn that there are some companies

Proceedings - Opening Statement

who might apply for tax breaks even though they don't actually deserve them. So, for example, a company might say, we planned to move jobs out of the state when they really had no such plans. Maybe a company says, we will create 100 jobs when they had no plan to do so or do not have enough business to sustain those jobs. Or maybe a company fully intended to create and sustain those jobs, but the business takes a downturn and they have to let people go.

In these and many other situations, someone from the government has to step in and say, hold on, you don't get to keep those tax breaks.

That's where the EDA comes in. They are supposed to have the right people, policies and procedures to be able to, one, receive and understand some pretty complicated data and information about whether the company qualifies under the programs

Proceedings - Opening Statement

requirements; 2, make sense of it; 3, verify or challenge the data; and then, 4, decide whether each company deserves or gets to keep the tax breaks.

While we are talking about big, big numbers, and tax breaks that will continue for 20 years. In fact, the New Jersey comptroller said in his audit and I quote, "The EDA has approved nearly 11 billion dollars in tax credit incentives," under the various tax incentive programs.

So a lot is riding on the EDA getting it right and doing its job well.

So what is the problem? Some serious problems have emerged that suggest the EDA may not have the right policies and procedures to serve as an effective gatekeeper. These problems suggest that the legislation itself did not include enough controls to ensure that the EDA would monitor effectively so that companies could not take

Proceedings - Opening Statement

advantage of the process by getting tax incentives that they did not deserve.

The problem was first exposed by the office of the state auditor in January 2017. He audited the EDA's work from July through September of 2016 and found serious problems with the EDA's work as a gatekeeper over the Grow New Jersey program.

The EDA's response was to submit a corrective action plan intended to plug the holes in its oversight, but after problems continued to emerge, Governor Murphy signed Executive Order Number 3 -- as the number suggests, it was quite early in his term -- requiring the comptroller to perform another more comprehensive audit.

Not only did the comptroller find more problems. He found that the EDA had never corrected some of the serious problems first identified by the state auditor despite its corrective action plan.

Proceedings - Opening Statement

Now, let me also be very clear on this. I'm quite sure, I know there are talented people at the EDA, but even the best people can't perform such complicated work effectively if they have an insufficient number of people, insufficient training or lack policies and procedures to verify the information provided by these companies. If the EDA simply relies on all the information provided by the corporate applicants without any effective verification, then you have a situation that is ripe for abuse.

So today in the first day of our multiday proceeding. We will hear from the comptroller, who will break it down for us, what went wrong and why it matters. This will help us try to figure out why it happened and, more importantly, what the legislature can do to fix it in future tax incentive bills.

So that is why we are here. We

Proceedings - Opening Statement

will continue to explore other subjects in subsequent days of this proceeding, including the process for drafting the bill and who had a role in that, whether anyone put pressure on the EDA to approve companies that never deserved the credits in the first place and, if so, why.

Before we get to today's proceeding, I want to take this opportunity to report on what the task force's efforts have been to date.

When we started out our work, the first thing we needed to do was to make sure that no one destroyed any documents as we were gearing up. Hopefully, no one would, but hope isn't a strategy, so we wanted to make sure.

So we sent letters to every single company that actually took tax credits. The letters told them essentially, don't get rid of anything or there will be problems. Almost 100 of those letters went out in early

Proceedings - Opening Statement

February.

Now, we also knew that many of these companies had people working for them when they were applying for these tax credits. Some had lawyers, some had consultants, some even hired lobbyists. We knew they also had relevant documents, so we sent document preservation letters to about 20 of those firms.

Then we started a process of collecting the documents and interviewing people, including the few at EDA, to better understand at a granular level its process of application, review, certification, and oversight for both tax credit programs. We are now reviewing the documents to understand each specific case.

Now, we have only been going for about eight weeks, but I think we have gotten a lot done. We have met at length with the comptroller, Mr. Degnan, to discuss more fully his

Proceedings - Opening Statement

office's audit and we thank him -- he will be here this morning. We thank him for his appearance today, during which we will ask questions about several of his important findings. We think it is critically important for the public to understand the scope and importance of his findings.

In addition, we have met with a few policy experts and analysts who have studied the efficiency and effectiveness of the state's tax credit programs. With the benefit of their experience and wisdom, we hope to make some specific recommendations on future tax incentive legislation before the current legislation expires.

I want to explain a few additional details about our work. As I said before, we enter this project without any preconceived notions that program beneficiaries have been misusing the tax incentives. Rather, it is our hope that program

Proceedings - Opening Statement

beneficiaries are in compliance with the program requirements.

At this stage, the next step in our investigation would be to issue comprehensive document production demands to the roughly 100 program beneficiaries that received Grow or ERG grants. Those productions might be burdensome.

For that reason, for program beneficiaries that believe they applied in good faith and have been compliant, we are announcing today that we will offer an opportunity to participate in an Accelerated Recertification Program, which I will refer to as the ARP.

Let me be clear that the ARP is task force program. It is not intended to take the place of EDA's annual certification process which is happening right now. It does not bind in any way the Attorney General in any investigations that he may undertake.

But it will allow those companies

Proceedings - Opening Statement

who believe they are in compliance an opportunity to establish that quickly, and it will allow us to focus our energies and resources to the more problematic situations.

The ARP will require the preparation of a detailed affidavit covering a number of issues, together with the submission of documents that go well beyond those required by the EDA's annual certification process.

We are not going to take the companies' word at face value. Companies will have to provide back-up data on every important aspect of the requirements. To further verify submitted information, we may need to interview corporate employees during this process. We may interview their lobbyists and lawyers. Also, we are going to work in cooperation with other state agencies, including the Department of Labor, to verify or challenge the information.

Proceedings - Opening Statement

For companies that want to participate in the ARP -- and we already have requests from over 50 companies to participate, we already have required them to submit detailed affidavits under penalty of perjury to, A, describe the steps that they undertook to make sure that all of their documents are preserved, to commit that, if necessary.

If they fail to recertify through our rigorous process, they will voluntarily comply with document production requests without the need for us to issue subpoenas. In this way, the public should know we will hold any company to account if they do not preserve and produce all documents relevant to our inquiry.

That said, we greatly appreciate the cooperation we are getting from the EDA, the comptroller, and program beneficiaries. Most companies readily agreed to cooperate with our

Proceedings - Opening Statement

investigation. Indeed, one company went so far as to disclose to us, on our very first call to them, that they were not in compliance with the program requirements. And, in fact, they have agreed in principle to repay the tax credits they received and further to the termination of their award which amounted to almost 1.5 million dollars.

So we have already begun the process of recovering money for New Jersey's Treasury.

We hope that any other noncompliant companies will follow this example. If we must flesh them out through our investigation, the results could be far worse for noncompliant companies.

Unfortunately, not everyone has promised cooperation. For that reason, the governor, under his power granted by the New Jersey Constitution and by state statute, has delegated direct authority to me to issue subpoenas.

Obviously, noncooperative program beneficiaries may be taking this posture for a variety of reasons, including that they have something to hide. Rest assured, we will investigate thoroughly, and if any applied for tax incentive benefits based on false or misleading information or if they are out of compliance, we will seek repayment or refer program beneficiaries to the Attorney General or the U.S. Attorney as appropriate.

With that introduction, I would like to call on Jim Walden to describe the testimony we plan to elicit at today's proceedings. For those who don't know Jim, he was a federal prosecutor for almost nine years. For the past 18 years, he has been in private practice conducting internal corporate investigations. He is also deeply involved in litigation to help improve the functioning and

accountability of our government across a range of issues. Jim.

MR. WALDEN: Thank you, Professor Chen. Thank you for your leadership. It has been great working together in these past eight weeks.

If I can take a minute to introduce more fully the members of the team, I think you will have confidence that this is a team that has significant fraud experience, antifraud experience in investigating corporations.

Milt Williams, former federal prosecutor and former state prosecutor, with significant fraud experience while at the government. He then served as the deputy general counsel for Time Life, a very significant position, where he oversaw several fraud investigations. And then finally he has been in private practice. In addition, Milt has the distinction of being the former cochair of New York's

Moreland Commission, which was a commission established to investigate political corruption.

Next to me is Georgia Winston. Georgia Winston has been a litigator for more than 15 years and conducted many significant internal investigations, including fraud investigations.

To Professor Chen's right, to your left, is Avni Patel, a former state prosecutor who is a senior lawyer at my firm.

And to her right, your left, is Pablo Quinones who was a long-time prosecutor in the Southern District of New York until he ascended to the position of deputy chief of the fraud section at main Justice.

So we are very pleased to be here. And there are two things that I want to say before I tell you about the lineup today.

Number one is that it is

extremely important to this body that whistleblowers come forward. Whistleblowers have a lot of burden on their shoulders, and they are extraordinarily important to investigations, and we welcome them, and I welcome them to call me directly. So my telephone number is 212-335-2031, and anyone that can help us in our mission, we are glad to receive information as long as it is reliable.

Secondly, you are going to see that, at least for the initial hearings that we are holding, that due process of all the individuals and companies is of critical importance to this task force.

This is a peculiar task force in one way. Part of our mission is that we have to conduct some of our fact finding in public. And we are at the very beginning stages of that investigation, although we have obviously made a significant amount of

Proceedings - Opening Statement

progress in the eight weeks that we have been a task force.

So there may be aspects to today's presentation and maybe the next hearing, because this is day one of a multiday proceeding, that are frustrating to you because we do not want to go into names of people and individuals -- and companies, and that is because we believe that it is important to get the information out there in a way that does the least amount of damage to people that are not here to defend themselves, and then we understand that it is our solemn obligation to investigate that thoroughly and then make a decision.

At that stage, if we corroborate information, we have a choice. And the choice is to call the companies or people to public hearings and confront them with the evidence. Or if the evidence is conclusive in our view, then Professor Chen has the discretion

Proceedings - Opening Statement

to make a referral to either the Attorney General's office or the U.S. Attorney's office as appropriate.

So for that reason, as we are having individuals testify, and really today it is really only relevant to two of the witnesses, we are going to ask them to testify without mentioning names and companies that are involved in alleged wrongdoing.

Now, let me turn to the lineup.

You will first hear from a woman named Gulsen Kama, who alleged that her former company was involved in an effort to defraud the tax incentive program. After Ms. Kama filed a court case, it's our understanding that her -- after some period of litigation, her former employer settled the case and put her under the obligation of a nondisparagement agreement.

So that is an additional reason, because we do not want to complicate things for Ms. Kama, that we will ask

Proceedings - Opening Statement

her not to name her former employer or the colleagues that she worked with at that company.

Next you're going to hear from the esteemed comptroller from state of New Jersey, Philip Degnan. He's going to testify about the audit, and we are going to try to unpack it and simplify it in a way that I hope is helpful to the public and that I think was not really a focus of the legislative hearing that occurred in February, we certainly hope that's helpful. But we also intend to identify and highlight some information that maybe should have been put before the comptroller during his audit but was not.

We will not draw conclusions about why it was not put there, and I want to emphasize that there may be completely explainable reasons. But we think this is an important issue and the public has a right to know.

After the comptroller, I will

Proceedings - Opening Statement

make a short presentation on a couple of points that are related to the comptroller's testimony, and then you will hear from Josh Goodman, of the Pew Charitable Trusts, which a public charity that provides nonpartisan research and technical assistance to policymakers across a range of issues, but including on tax incentives. And Josh is a senior officer of economic development at Pew. He will testify about national best practices and a design, implementation and oversight of tax incentive programs and ways in which New Jersey could improve both the way it monitors and in future legislation.

And then finally, you will hear from a man named Jon Whiten, who was formerly at the New Jersey -- formerly of New Jersey Policy Perspective where he worked for almost seven years, and we will hear his perspective on New Jersey's tax incentive program,

G. Kama

including the disconnect between the initial legislation and the bills that ultimately came and the lack of true oversight over EDA. He will also cover ways in which future legislation can improve the situation.

So without further adieu, could I please call on Gulsen Kama and her attorneys to take the seats at center stage.

I think they're in the hallway. My colleague, Mr. Williams, will go get them.

MR. CHEN: Ms. Kama, can you rise and raise your right hand. Do you solemnly swear or affirm that your testimony you're about to give is the truth, whole truth and nothing but the truth?

THE WITNESS: I do.

EXAMINATION BY
BY MR. WILLIAMS:

Q. Good morning, Ms. Kama. Thank you for joining us today.

G. Kama

You're accompanied by your attorneys, is that correct?

A. Correct.

Q. That's Mr. Richard Meisner and Mr. Scott Salmon, correct?

A. Correct.

Q. You are here today as a result of the task force issuing a subpoena, is that correct?

A. Correct.

Q. And could you please state your full name for the record.

A. Gulsen Kama.

Q. And how do you spell the first name?

A. G-U-L-S-E-N.

Q. As you have heard today, a significant part of our in-depth examination of the EDA tax incentive programs is to focus on the company level and assess whether companies were compliant and truthful in their applications and certifications to receive EDA tax credits. In this way by understanding the potential

G. Kama

means companies used to evade detection of potential fraud, we can help the EDA to improve its monitoring and make helpful suggestions for legislative requirements for future tax incentive bills.

We are aware in April of 2016, you filed a whistleblower complaint or qui tam action in New Jersey Superior Court against your former employer, and we want to speak to you about your experience at the company and about your specific allegations in the complaint.

We are obviously not here -- this is not a trial. We are obviously not here to draw any conclusions or inferences. We just want to find out what you know, what you observed and your experience. And we ask in that context that you refrain from mentioning the name of your employer, anyone you worked with. The name of any substance, we will refer to them as company or individual or by their title, OK?

A. OK.

Q. And obviously you have been

G. Kama

advised of your right to counsel to be here and they are here with you.

Is it true that I met you about two days ago for the first time?

A. Yes.

Q. Have we discussed in general the allegations in your complaint?

A. Yes.

Q. Have you also been advised that the EDA may ask to cross-examine you at some point?

A. Yes.

Q. And obviously you are here to tell the truth?

A. Nothing but the truth.

Q. Now, let me ask you some questions about your background in terms of your work experience. And again, don't mention any company you worked for, just generally describe what they -- what they were, what they did.

What's your educational background?

A. I have a bachelor of science

G. Kama

degree in industrial engineering from the Bogizici University in Istanbul, Turkey, and I have a master's of business administration from the University of Georgia in Athens, Georgia.
Q. And are you currently employed?
A. I am.
Q. What is your position?
A. I am a finance executive.
Q. Are you the CFO at your current company?
A. I am the regional CFO at my company.
Q. You've generally been in the financial business for about 22 years?
A. Correct.
Q. When did this start? Did this start about 1996?
A. That's correct.
Q. Without naming the company, did you work for an analyst for an international shipping company?
A. Logistics company, yes.
Q. How long did you work there?

G. Kama

A. About two years.
Q. And then what was your next position?
A. I worked for a major airline.
Q. And for how long?
A. Almost 13 or 14 years.
Q. What was your position there?
A. I had several positions, mostly in the finance department, as a strategic finance professional advising C level executives.
Q. And is it fair to say at your last position, you left that company in 2011?
A. Correct.
Q. What was your title at the time that you left?
A. I was the managing director of corporate and government affairs.
Q. Where did you go in 2011? Where were you employed?
A. I moved to New Jersey in 2011.
Q. What type of company did you work for?

G. Kama

A. It's a retail -- it was a retail company that I came to New Jersey to work for.
Q. How long did you work there for?
A. About two years -- a year and a half.
Q. And what was your role there?
A. I actually was the vice president of strategy.
Q. From 2013 to 2014, you had another position?
A. Correct.
Q. Where was that? What type of company? Sorry.
A. It was an insurance company.
Q. And what was your title or role there?
A. I was the corporate director of financial planning and analysis.
Q. From there, where did you go? That was -- in 2013, 2014, you were the director of corporate financial planning and analysis, correct?
A. Correct.

G. Kama

Q. Then in 2015, you held the position as the VP of financial planning and analysis at a professional services company, correct?
A. Correct.
Q. And what were your duties and responsibilities there?
A. I was there to financially advise the CEO on any business matters that came up.
Q. And when you say CEO, you mean the chief executive officer?
A. Correct.
Q. That's the head of the company?
A. Correct.
Q. And you held that position from about 2015 to 2016?
A. Correct.
Q. And then you currently are the regional CFO at a publicly traded healthcare company, correct?
A. Yes.
Q. What do you do there?
A. I manage the financials for a

G. Kama

large business unit.

Q. So you have generally worked in the area of finance and planning since graduating from business school, correct?

A. Correct.

Q. And just could you tell me in general what does that entail?

A. It entails looking at the business decisions and arming the executives making those critical business decisions with the relevant, correct information.

Q. And in the various roles that you have held over the years, you've more or less worked with C-Suite level executives, correct?

A. Correct.

Q. Consistently, correct?

A. Consistently.

Q. I'm going to hand you what I guess we can label as Task Force Exhibit 1. And I just ask you to look at it. I have given you that. It is highlighted.

Rich, let me know when I can go

G. Kama

ahead after you take a look.

So I would like to ask you a few questions in what I handed you. Without stating any names in it, what is that?

A. This is the complaint I filed against my former company.

Q. And is this the company -- let me just get this exactly -- that you worked at between 2015/2016, as a VP of financial planning and analysis?

A. Correct.

Q. And this was the professional services company?

A. Correct.

Q. Is that a whistleblower complaint that you filed?

A. Yes.

Q. And another name that can be referred to is a qui tam complaint, correct?

A. Correct.

Q. Can you, to the best of your knowledge in layperson's terms, describe what a whistleblower or qui tam complaint

G. Kama

is?

A. I will try. It is a complaint -- actually, can you clarify the question?

Q. Sure. Let me -- maybe I will assist you a little bit.

Is a whistleblower lawsuit brought as a private citizen on behalf of the government where you thought that fraud had been committed by your company against the government, correct?

A. Correct.

Q. That is why you brought this complaint, correct?

A. Correct.

Q. And without, again, providing any names of the -- of anybody, you filed this complaint against your former employee and its CEO, correct?

A. Yes, the former employer and the CEO.

Q. That's right. Thank you.

You brought this qui tam complaint because you witnessed misconduct and fraud against the state by a prior

G. Kama

employer, correct?

A. Correct.

Q. Just quickly, were you terminated as a result of raising your concerns about misconduct?

A. Yes.

Q. You reported this to -- basically the number -- directly to the number 2 person at the company, is that correct?

A. Reported the misconduct?

Q. Yes.

A. Yes.

Q. You reported it to the CEO's right-hand man, correct?

A. Correct.

Q. What was that individual's title?

A. Head of strategic planning.

Q. In that company that you worked for from 2015 to 2016, you reported for the most part directly to the CEO, is that correct?

A. That's correct.

Q. And you had lots of contact with the CEO during your tenure there, correct?

G. Kama

A. Yes.
Q. Now, approximately when did you file this complaint?
A. April of 2016.
Q. Is this action still pending?
A. No.
Q. Was it settled?
A. Yes.
Q. Do you know whether or not the EDA was ever made aware of the filing or existence of this complaint?
A. I don't know.
Q. Now, I ask you to turn to the complaint. We are going to use this as a guide since you have very specific allegations in it.
Would you please read into the record the first highlighted introductory sentence. I believe it's on the first page and it starts, "This is an action by qui tam relator," do you see it?
A. Yes.
Q. Would you read that, please?
A. Sure.

G. Kama

"This is an action by qui tam relator Gulsen Kama on behalf of the state of New Jersey to recover penalties and damages arising from the submission of false information by the company and CEO to the New Jersey Economic Development Authority. Relator Gulsen Kama also brings in her own name supplemental claims against her employer, the company, in connection with the unlawful termination of her employment."
Q. Some of my questions may seem a little redundant. I just want to make sure we unpack everything and make it as clear as possible.
You are the relator, correct?
A. Correct.
Q. At the time this company -- I think I've already said this -- you were the VP of financial planning and analysis, is that correct?
A. Correct.
Q. And you reported to the CEO for the most part, is that correct?

G. Kama

A. Correct.
Q. In your qui tam whistleblower complaint, there were two EDA programs that were involved, is that correct?
A. Correct.
Q. And would you tell us what the two programs were involved?
A. BEIP and Grow New Jersey.
Q. And do you know what the acronym -- can you tell me what the acronym BEIP stands for?
A. Business Economic Incentive Program.
Q. Close. Business Employment Incentive Program.
Let's focus for a second, when you joined the company, had they already been awarded the BEIP -- we'll call it a BEIP -- award from EDA?
A. Yes.
Q. And do you know approximately, based on working at the company, when they received the BEIP award, when they were granted?

G. Kama

A. In 2001.
Q. Two thousand --
A. 2001.
Q. Can you just generally, to the best of your knowledge, describe what a BEIP program is?
A. I'll try. It is an incentive given to companies to either retain or create jobs in any given state.
Q. And how long was this company that you worked for supposed to remain in compliance with the BEIP program?
A. Through October 1, 2016.
Q. Why don't you take a quick look at paragraphs 11 through 13 of your complaint. I just want to make sure.
And if you want to read it into the record, that's fine, because the next question -- go ahead. Read it.
A. Oh, read it?
Q. No, read it to yourself if you want and I'll ask you a question, OK?
A. Sure.
Q. My question is -- if you want to

G. Kama

read it, it's fine -- could you elaborate on the misconduct that you witnessed in connection with the BEIP grant?

A. One of the requirements of the BEIP plan was having a minimum number of employees employed in the state of New Jersey. And the company had fallen below that minimum or had lowered that minimum number of employees.

Q. Which put them in violation of the BEIP grant, right?

A. They were not compliant.

Q. And how long, to your knowledge, was the company not compliant with the rules and regulations of the BEIP grant?

A. At least 18 months.

Q. And was the company required to certify its employment numbers for the BEIP award to EDA?

A. On an annual basis, yes.

Q. And did they do so?

A. No, not to my knowledge.

Q. And to your knowledge, did the EDA ever learn that this company was out of

G. Kama

compliance with the BEIP rules and regulations?

A. Not at that time, but later, yes.

Q. Approximately when to your knowledge did the EDA learn that this company was out of compliance with the BEIP award?

A. Sometime after the company filed the application for the Grow New Jersey.

Q. Were you working at the company at the time?

A. I was.

Q. And how did you -- from whom did you learn this information? Titles, please.

A. Head of strategy.

Q. This was the right-hand man to the CEO?

A. Correct.

Q. Did you know what happened when the EDA learned or was made aware that the company was out of compliance with the rules and regulations of the BEIP grant?

A. Can you be more specific?

G. Kama

Q. Was there a certain amount of money that the company was awarded as a result of the BEIP grant?

A. There was money awarded to the company as part of the BEIP grant.

Q. Was it, to the best of your recollection, about 2,600,000 dollars?

A. Correct.

Q. What, if anything, happened, to your knowledge, when the EDA learned that the company was out of compliance with the BEIP award?

A. The company --

Q. I am sorry, when EDA learned that the company was out of compliance.

A. The company would have been required to pay back all the incentives that it had received until that point.

Q. Which is about 2,600,000 dollars, correct?

A. That is the grant amount. I don't know exactly how much they had received up until that point.

Q. Understood.

G. Kama

Did the company, to your knowledge, enter into some kind of settlement with EDA?

A. Yes.

Q. For how much money?

A. 268 or -70,000 dollars.

Q. So approximately 10 percent of what the overall award was, correct?

A. Correct.

Q. Were you involved at all in the negotiation for the return of this money?

A. I was the financial person providing the numbers and analysis supporting the grant application.

Q. With regard to BEIP?

A. The Grow New Jersey, I'm sorry.

Q. I'm talking about BEIP.

A. I'm sorry. I apologize. No, I was not.

Q. Right. How did you learn that the company had reached a settlement with the EDA and had to return the money?

A. When we were putting together the application for the Grow New Jersey

G. Kama

incentive, we actually -- the company ended up engaging a consultant firm.

Q. And you learned from the consulting firm?

A. Correct.

Q. And you found out that the company had returned this money while you were working there, correct?

A. Correct.

Q. And you learned this from the consulting firm?

A. Correct.

Q. Just to confirm, the company was out of compliance with the rules and regulations of the BEIP program, correct?

A. Correct.

Q. Now, let's go to the Grow New Jersey program. I would like to talk more about the alleged false statements that you made that you set forth in your complaint in connection with the Grow New Jersey grant that you mentioned.

In your complaint on page 12, paragraph 96, you allege that "The company,

G. Kama

by and through its officers, agents and employees, knowingly presented or caused to be presented to the New Jersey Economic Development Authority fraudulent information for approval of a grant pursuant to the Grow New Jersey Assistance Act."

Do you see that? Is that what you stated in paragraph 96 to your complaint?

A. Yes.

Q. And in your own words, would you just describe what the conduct that you witnessed was?

A. There was untruthful representation of information in the application submitted.

Q. And did this have to do with the fact -- just let me help you here a little bit -- that this company lied on its application and supporting certification that jobs were at risk of leaving New Jersey because the company was not contemplating -- was actually not

G. Kama

contemplating leaving New Jersey?

A. Correct.

Q. When did you learn to come -- when did you come to learn about, that the company had applied for a tax incentive award from EDA under the Grow New Jersey program? Approximately when?

A. The application was filed in -- on March -- mid March 2015.

Q. So March, April, 2015, somewhere around that time frame?

A. Right. March 18, 2015 was the application date.

Q. OK, got it.

How did you come to learn about the misconduct?

A. As I was interviewing with the company back in the fall of 2014, I actually was interviewed by the then CFO, chief financial officer, of the company.

And at the time I actually was working for a company that was on Wall Street and I did not enjoy my commute. So my number one concern, you know, being --

G. Kama

looking for a new job was having an easier commute, requiring the company to be located in New Jersey.

And I was told by the then CFO that the company was considering relocation. However, all of the location options they were considering were in the state of New Jersey. So I had reason to believe that.

Q. When you first started working at the company, there was no CFO, is that correct?

A. He left on the first day I started.

Q. So you ostensibly became the CFO, without the title?

A. Correct.

Q. In terms of the Grow New Jersey application process, were you the key financial person who spearheaded gathering all the data, the financial data for the company?

A. Yes, I was.

Q. And were you interacting -- in

G. Kama

connection with the application for the Grow New Jersey program, were you act interacting with the CEO and his right-hand man on a regular basis?

A. I was.

Q. When you were putting together the paperwork, what did you notice about the locations?

A. The locations that were being considered all -- they were all in New Jersey.

Q. That's -- you knew that the company was just going to stay in New Jersey, correct?

A. Correct.

Q. And with regard to the application, what was put in the application?

A. That different alternatives, out-of-state alternatives were being considered.

Q. Out-of-state alternatives were being considered?

A. Correct.

G. Kama

Q. You knew that -- did you know that not to be true?

A. I did.

Q. That was based on -- you mentioned when you interviewed, the then CFO made that representation to you, is that correct?

A. Correct.

Q. Did the CEO or right-hand man also tell you, once you began working there, that they weren't moving out of New Jersey?

A. Yes.

Q. Can you tell us -- and I'm kind of focusing on the consultant now, without naming the company, in connection with the application for the Grow New Jersey program, the company hired a consulting firm, correct?

A. Correct.

Q. And what, if anything, did you learn from the consulting program about the submission of the application or what was going to go in it?

G. Kama

A. There was a CEO certification required as part of the application. And accompanying the CEO certification, we were at the time advised by the consulting firm that we needed to have credible out-of-state alternatives included in the application.

Q. Why?

A. Because that was one of the -- well, actually, the key requirement in the Grow New Jersey incentive.

Q. So let me just make sure we unpack this.

The consulting firm advised your company, its CEO, you and the right-hand man, that in order to be eligible for the Grow New Jersey program, that in the application, you had to put down that the company might move out of state unless it was going to get these tax incentives under the Grow New Jersey program?

A. I do not -- I was just going to --

Q. Go ahead.

G. Kama

A. -- clarify one thing.

I don't know the exact language, but I don't think it said "might move." I think it said "will move out of state" if it doesn't receive the incentive.

Q. And in the application, to your knowledge, the application that was made to the Grow New Jersey program, the CEO certifications stated that the company would move out of New Jersey unless it got the tax incentive award from the Grow New Jersey program?

A. Correct.

Q. And that false statement was placed in the CEO certification at the advice of the consulting firm, correct?

A. Correct.

Q. And you had direct contact with the consulting firm, correct?

A. Correct.

Q. And you mentioned that the consulting firm also had an opinion or gave some kind of opinion to the company about its eligibility and involvement in the BEIP

G. Kama

program, correct?

A. Correct.

Q. And can you tell us what the consulting firm told your company about the BEIP program?

A. Two things. Under the BEIP program, the company was obligated to stay in New Jersey through the expiration of the BEIP program, which was October 1, 2016, and had the company chosen to leave the state before that date, the company might be required to pay the full amount of incentive it had received up to that point under the BEIP program.

Q. That was -- the company is required to stay in the state and meet the requirements of the BEIP program until in or about October of 2016, correct?

A. Correct.

Q. And the applications in the Grow New Jersey program was made in, I think you said, on or about March 18, 2015, correct?

A. Correct.

Q. Was there some type of

G. Kama

cost-benefit analysis that the consulting firm prepared in connection with your Grow New Jersey application?

A. Yes.

Q. Could you tell us about that?

A. The analysis included -- of the locations, the in-state and out-of-state being considered for the relocation and the financials associated with those locations.

Q. You mentioned in-state and out-of-state. Would you please turn to page 10 of your complaint, paragraph 71.

Was the cost-benefit analysis included as part of the application to the Grow New Jersey program?

A. Yes.

Q. And what -- that submission was made, to the best of your knowledge, to EDA, correct?

A. Correct.

Q. And what -- if you look at paragraph 71, what out-of-state alternatives were placed or were mentioned in the cost-benefit analysis?

G. Kama

A. The out-of-state alternative was called a blended alternative, and the reason for that was it was a combination of a New York City location and Sarasota, Florida location.

Q. As part of the company's analysis that if they didn't get the Grow New Jersey award, they would leave the state of New Jersey, correct?

A. Correct.

Q. And you saw this cost-benefit analysis?

A. I provided the numbers for the cost-benefit analysis.

Q. To the best of your knowledge, the idea or the concept that the company was going to use this blended program of Sarasota and New York City was a false representation?

A. Correct.

Q. Who prepared the final version of the relocation and compensation and related summaries of the New Jersey, New York and Florida scenarios?

G. Kama

You know what, let me back up. Just look at paragraph 75 of your complaint.

A. That was the consulting firm then.

Q. They prepared that?

A. Yes.

Q. And who did they work in tandem with, the company SVP?

A. The company head of strategy, yes.

Q. And that was the CEO's right-hand man, correct?

A. Correct.

Q. Are you aware of whether or not this consulting, consultant or consulting firm was responsible for submitting the company's entire application to the EDA?

A. I was.

Q. Do you know whether or not -- who submitted the application for Grow New Jersey to the EDA?

A. To the best of my knowledge, the consulting firm did.

G. Kama

Q. I ask you to look at page 13, paragraph 98 of your complaint.

And do you see that there you state that "The company executives knowingly presented a false CEO certification to the New Jersey Economic Development Authority to gain approval of a Grow New Jersey assistance grant." Correct?

A. Correct.

Q. That's what paragraph 98 says, correct?

A. Right.

Q. And just to go back over, what is the CEO certification that you reference in your complaint?

A. It is a required document as part of the Grow New Jersey application, and there are two key requirements or certification components to it.

One is the existing jobs in New Jersey are at risk of being located out of state. And then the second requirement is the jobs, existing jobs will relocate out

G. Kama

of the state if the Grow New Jersey incentive is not granted.

Q. And just take a quick look at paragraph 25 in your complaint.

A. You said 25?

Q. I am sorry, paragraph -- yes, complaint paragraph 25.

A. OK.

Q. And I'm just going to ask this question: Essentially, in the CEO certification, the CEO has to certify that, but for the grant, the company would leave the state, correct?

A. Correct.

Q. Now, could you turn to page 8, paragraph 60 and read the highlighted portion of it.

A. "The CEO certification was false and known by CEO to be false because, as of such date, the decision to relocate to Jersey City was already a done deal."

Q. Sorry, go ahead.

A. "The VP strategy knew the CEO certification was false but willingly

G. Kama

cooperated with the submission to New Jersey of the false CEO certification."

Q. Now, to yourself in your complaint, read -- just read complaint paragraph 28 and 41. And then I'll ask you a question. It has to do with what you just referenced as a done deal.

Did you read paragraphs 28 and 41?

A. Yes.

Q. Now, the question is, in the last answer that you gave you discussed done deal, so how did you know the decision to relocate within the state of New Jersey was a done deal?

A. I heard the CEO of the company state that the relocation to Jersey City was a done deal in a meeting.

Q. Was this before or after the application to Grow New Jersey was made?

A. It was before.

Q. Do you remember by any chance how much before?

A. March 2.

G. Kama

Q. Of?

A. 2015.

Q. OK. So about two weeks or so before the application was made?

A. Yes, yes.

Q. Could you look at page 13, paragraph 104, the highlighted section of it.

I ask you to read that into the record, please.

A. "Furthermore, the company always intended to move to Jersey City and had been negotiating an agreement to lease a Jersey City office space months before the New Jersey EDA board made any decision, and, therefore, it was false that the company would have relocated out of state but for the New Jersey Grow grant money."

Q. To your knowledge, was the information -- to your knowledge, if you know, was the information concerning that it was a done deal to move to Jersey City provided to the EDA?

A. To my knowledge, no.

G. Kama

Q. To your knowledge, based on your interactions and conversations with CEO and the VP of strategy, had the company ever seriously considered moving out of the state of New Jersey?
A. No.
Q. Now, if you look at page 5, paragraph 32 of your complaint, you allege that you were asked by the company to look into the impact of a move to New York City and Florida.
A. Could you give me just a minute? The pages got reshuffled.
Q. No worries. Page 5, paragraph 32. Do you want a new one that's not shuffled up?
A. That's all right.
Q. So you were asked, according to paragraph 32 of your complaint, by -- asked by the company to look into the impact of a move to New York City and Florida, correct?
A. Correct.
Q. Now, if it was a done deal, why were you asked to do an impact analysis of

G. Kama

a move to New Jersey -- to New York City and Sarasota, Florida.
MR. MEISNER: Can you repeat the question, please?
Q. Sure.
If it was a done deal, the company was staying, going to move to Jersey City, stay in the state of New Jersey, why then, to your knowledge, were you asked to do an analysis of the impact of a move to Sarasota, Florida and New York City?
And if you want to look at page 7, paragraph 48, go right ahead, before answering the question.
A. The reason I was asked to look into the financials of relocating to New York and Florida was because a consultant company had advised the company that a credible out-of-state alternative should be included in the Grow New Jersey application.
Q. Now, were you asked to do this analysis before or after you learned from

G. Kama

the CEO of the company that staying in New Jersey was a done deal?
A. The statement by the CEO was made on March 2. I was asked to do the analysis on February 21. It was shortly before.
Q. And how at that time did you know in February of 2015 that there was no possibility the company was going to move out of the state of New Jersey?
A. Based on my first interview with the then CFO. I also found out after I started with the company, there was an employee survey conducted for the different alternative locations, and all three locations included in that employee survey were in New Jersey. And also the head of strategy, in an e-mail to the consulting firm, stated that the Jersey City location was the company's top choice.
Q. And this was all before you were asked to do the analysis?
A. Correct.
Q. Will you look, turn to page 4 and look at paragraphs 25 and 26.

G. Kama

A. Yes.
Q. And so is it fair to say that what paragraphs 25 and 26 are stating is that the consultant advised the company to generate and falsify evidence making it appear, after the fact, that the company would leave the state of New Jersey if it did not receive grant money from the state of New Jersey?
A. Correct.
Q. And this was -- this was done at the advice of the consultant, correct?
A. Correct.
Q. And is it fair to say that the company was following the advice of the consultant?
A. It was my belief that the company was following the advice.
Q. Specifically the CEO and head of strategy, correct?
A. Correct.
Q. To your knowledge -- had you had any interaction with the consulting firm?
A. I did.

G. Kama

Q. To your knowledge, based on your conversations with the representatives of the consulting firm, is it fair to say that they knew that the information contained in the CEO certification was false?
A. They were given all the information that I was aware of.
Q. And that is including that the three alternatives for relocation were really -- were all within the state of New Jersey --
A. Yes.
Q. -- correct?
Just let me finish the question before you answer, even though you can anticipate what I am going to say.
A. OK.
Q. Would you look at page 9, paragraph 68.
A. Yes.
Q. There, in paragraph 68 of your complaint, you allege that a consultant told the company, "We will want to state clearly that the alternative is the

G. Kama

low-cost option and that your existing operations and excess space in Florida provide you with an opportunity to achieve significant cost savings for a cohort of your employment, roughly 50 percent of your current New Jersey employment."
Is that what you state here?
A. Correct.
Q. Is this part of the false record and representations that you mentioned before that were made to EDA?
A. Yes.
Q. And again, this was false because the company had no intention of leaving the state of New Jersey, correct?
A. Correct.
Q. Please turn to paragraph -- page 10, paragraph 71.
Actually, never mind. Actually just read page -- paragraph 71 of page 10 to yourself.
A. Yes.
Q. That paragraph had to do with the cost-benefit analysis for New York City and

G. Kama

Sarasota, Florida, correct?
A. Correct.
Q. And that contained false information, to the best of your knowledge, is that correct?
A. Correct.
Q. And that was because the company wasn't considering moving to either?
A. Correct.
Q. And just look at complaint -- paragraph 76 of your complaint.
We are getting close to the end.
A. Yes.
Q. Read that paragraph to us.
A. "That the location, compensation and related summaries represented to the New Jersey EDA that there still was an alternative plan to bifurcate the company headquarters between New York and Sarasota, Florida, even though the counterproposal for the office space at 222 Broadway, New York, New York, had since expired."
Q. So again, that was another false, part of the false statement made to EDA,

G. Kama

correct?
A. Correct.
Q. So to the best of your knowledge, the consultant was a knowing participant in the company's fraud on EDA, correct?
(Pause)
Q. Well, do you want me to clarify? Sure.
The consultant submitted the application to EDA with all of this false information, correct?
A. That is my understanding.
Q. And the consultant was aware of all the information that you were, the same information you were, that contradicted what was put in the application, correct?
A. Certainly had access to that information, yes.
Q. And again, with regards to the BEIP award, that award the company received back in 2001 through the EDA, correct?
A. Correct.
Q. And at the time that all this was going on with regard to Grow New Jersey

G. Kama

application, the company was not in compliance with the BEIP award, correct?
A. Correct.
Q. Now, did you raise your concerns about the misrepresentations or false statements in the Grow New Jersey application to either the CEO or the VP of strategy at this company?
A. I did raise some to the VP of strategy.
Q. And what did you -- why don't you look at complaint paragraph 38 and read that, please.
A. Could you give me a page number?
Q. Sure.
A. I have it.
Q. You got it?
A. Um-hm. You asked me to read it, right?
Q. Yeah.
A. "On or about February 25, 2015, relator objected to the CEO certification, and she did so when meeting with the VP of strategy regarding the CEO's certification

G. Kama

and advising him that it was not true that the company seriously considered moving its headquarters outside the state of New Jersey."
Q. And again, the VP of strategy was the CEO's right-hand man, correct?
A. Correct. Did you want me to read the rest?
Q. Yeah, I'm sorry.
A. "In response, the VP of strategy told relator not to worry about it and instructed her to focus only on the numbers in support of the company's New Jersey Grow grant application."
Q. So when you told him, the VP of strategy, about your objections to the CEO certification, he told you not to worry about it?
A. Correct.
Q. Eventually this company was granted a Grow New Jersey award, correct?
A. Correct.
Q. And after they were granted the award, forgetting all the false

G. Kama

representations in the submission application, submission of the application, after they actually got the award, were they in compliance with the rules and regulations of the Grow New Jersey program?
A. No.
Q. And why don't you look at page 11, paragraph 84 and 85, and tell us why it is -- you can read it or say it in your words -- why it is they were in not compliance with the award program, Grow New Jersey, after getting it?
A. After getting the New Jersey Grow grant, the company ended up relocating its headquarters to Jersey City. However, part of that relocation actually moved the human resources and payroll departments to Florida.
So they never came to the Jersey City location, and doing so violated the minimum threshold required in number of employees that needed to be in Jersey, in New Jersey.
Q. In order to qualify or continue

G. Kama

to qualify for the Grow New Jersey award, is that correct?
A. Correct.
Q. What was that minimum threshold of employees they were supposed to have in New Jersey?
A. 69.
Q. As a result of, when they relocated and sent some people, I think you said HR and another department, to Sarasota, Florida, the company fell behind the minimum threshold of 69?
A. Correct. Correct.
Q. So the violations, the company's violations of the Grow New Jersey program commenced at the application process and continued after the award of the -- award under the Grow New Jersey program, correct?
A. Correct.
Q. Now, when did you learn that the company was not in compliance with maintaining the minimum threshold of 69 employees in the state of New Jersey? When?

Page 74

G. Kama

A. It was in early December, 2015.

Q. Did you raise this with the company?

A. I did. It was actually a meeting held where several company executives were present.

Q. Did you tell the CEO and representatives of HR that they were not in compliance with the Grow New Jersey program?

A. I did.

Q. And what was their reaction?

A. I don't know if there was a reaction.

Q. But based on what you are saying here today, you told them in December of 2015 that they were not in compliance with the Grow New Jersey program --

A. Correct.

Q. -- in terms of maintaining the minimum number of employees in the state in order to benefit from that program, correct?

A. Correct.

Page 75

G. Kama

Q. That was December 2015, right?

A. Yes.

Q. And then in February of 2016 you were fired?

A. I was.

Q. And that was about approximately three months -- or I'm sorry, two months after you told them they were not in compliance with the Grow New Jersey program, correct?

A. Correct.

MR. WILLIAMS: That is all I have, ma'am. I want to thank you on behalf of the task force. I am sorry, Mr. Chen, any other questions?

MR. CHEN: I just have one follow-up.

If you know, Ms. Kama, do you know when your former employer decided to move the human resources and payroll department to Florida?

THE WITNESS: It was shortly after -- or as part of the move from Parsippany to Jersey City. I'm trying

Page 76

G. Kama

to remember what -- I believe it was September of 2015.

MR. CHEN: OK, all right. Thank you.

MR. WILLIAMS: Thank you very much for coming here today.

Mr. Meisner and Mr. Salmon, thank you for coming here.

MR. WALDEN: Let me make sure the record is clear about two things. Number one, because Ms. Kama was subpoenaed, there is a provision of the law that entitles the EDA, which is really the subject of day one of the hearings, to cross-examine her.

We have consulted with counsel from the EDA, and they have decided at this point not to exercise that right now, although they reserved the right to cross-examine her at a future proceeding.

Secondly, irrespective of the fact -- you don't have to stay. You can if you want to.

Page 77

P. Degnan

So irrespective of the fact that we used the subpoena to secure Ms. Kama's appearance, under the law, any company or individual who is being adversely affected by testimony has the right to submit a short written sworn statement putting forward their perspective.

We have consulted with counsel for the former employer, and they have elected the same thing. They are not going to submit something for us to read into the record today, but they may do so at a future proceeding.

With that, may I please call Comptroller Philip Degnan to the stand.

MR. CHEN: Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

MR. CHEN: Thank you very much for coming.

THE WITNESS: Thank you for

P. Degnan

having me.

EXAMINATION BY
MR. WALDEN:

Q. Good morning.
A. Good morning.
Q. How are you?
A. I'm doing OK.
Q. Do you want to introduce the person standing to your right?
A. Sure. This is Kevin Walsh from the Gibbons firm in Newark, New Jersey.
Q. Would you please say and spell your name for the record, Comptroller.
A. Sure. It's Philip Degnan. P-H-I-L-I-P, D-E-G-N-A-N.
Q. First of all, on behalf of us all, we would very much like to thank your office for cooperation, the information, the time you have spent with us, and we look forward to your continuing cooperation.
Our goal today is further understanding the finance of the audit, and obviously the audit was very comprehensive.

P. Degnan

You filed it on January 19. We understand that it's very dense, and it's very complete.
But our main goal today is to try to make the information as accessible as possible to the layperson. And so I understand that, as a general matter, you wish not to go beyond the four corners of the audit, and I'm going to, in my questions, I will confine myself to that operating rule.
But I will ask you questions just to help people understand in an accessible way the significance of some of your findings. And I will at one point have a follow-up request for you if you would consider it, is that OK?
A. Of course.
Q. First, can you explain just so everyone in the public understands, the general roles and responsibilities of the office of the comptroller?
A. So the comptroller's office is an independent fiscal watchdog agency designed

P. Degnan

to promote efficiency, good government practices, safeguard taxpayer funds.
In the office, we have four divisions. Medicaid fraud division, and that's just what it sounds like. It doesn't commit Medicaid fraud; it investigates Medicaid fraud.
In addition to that, we have a procurement division. Our statute requires that under certain amount thresholds, executive branch for state procurements have to be submitted to our office for a review of the process that's being used. We don't get into a good idea or bad idea analysis, just simply whether we are using the appropriate procurement process under the circumstances.
We have an investigations division that is -- performs general waste, fraud and abuse investigations.
And most relevant to today, we have our audit division that audits agencies that receive executive branch funds, school districts, municipalities,

P. Degnan

the EDA. And we would report publicly on the findings of our audits.
Q. Thank you. That's very comprehensive. Do I understand correctly that the comptroller -- for those people that are familiar with the structure of a public corporation, there is something in a public corporation that's usually called "controller."
So is the comptroller the government version of a controller company?
A. Yeah, no, I've talked to comptrollers from other states, sometimes they are called "controllers." The role in this state is a little different than in other states.
So I -- I don't know that I can compare it to how a public company's controller works. But I think in the confines of the four divisions I just discussed, that's where my authority lies.
Q. Let me turn my attention to the audit itself. You filed the audit on January 19 of this year?

P. Degnan

A. Actually January 9.

Q. 9th, thank you. If I make a mistake, be sure to -- could you give us a general understanding of what the focus of the audit was?

A. Sure. The focus of the audit was to take a deep, independent look at the manner in which the Economic Development Authority was administering five different tasks in our programs. And it's -- that was the sort of the umbrella of the project.

Q. Would I understand this correctly to be something you would refer to as a performance audit?

A. Yes.

Q. And can you describe for us the difference between a performance audit and another kind of audit, for example, a financial audit?

A. Sure. A financial audit, honestly, is what most people think when you use the word "audit." It's a look at the financial well-being of a company, for

P. Degnan

example, balance sheets, accounts receivable, revenue streams, things like that.

A performance audit is the independent examination of a program or an agency, in this case, for example, where we focus more on the process that's being used by the agency, the process that's being employed, to make sure that that agency or program is complying with appropriate statutes, rules, regulations, that they are employing best practices to safeguard funds, so it is less about the finances in a traditional audit sense and more about the processes that are being employed for an agency or program.

Q. Understood.

So we can get into the main subjects, can you just help folks understand, what is the EDA? You said that it was largely a performance audit of the EDA policies and procedures with respect to tax incentive programs, five of them.

What's the EDA's role with

P. Degnan

respect to tax incentive programs?

A. So the -- in this setting, in this context, the EDA is the New Jersey Economic Development Authority that is tasked with running and administering the five incentive programs that we looked at, the independent agency, the executive branch of state government, and have more sort of a traditional corporate structure than other state agencies have, but I don't know that it is necessary or relevant to how they administer the programs. It's just the way they are set up.

Q. Would it be fair, in layman's terms, to think of the EDA's as the watchdog, so to speak, over tax incentive programs to make sure that there is oversight, compliance by the recipients with the requirements of the award?

A. That is our conclusion. I don't think there is statutory language that directs them to perform in a watch dog function, but certainly in the interest of good government, given the fact that

P. Degnan

taxpayer funds are at issue, the amount of funds that we are talking about, just the general nature of their role and responsibilities, it seems to me that that would be a fair characterization of part of their responsibilities.

Q. I know that you conducted the audit in response to an executive order, but why is it important for the comptroller's office to perform an audit of something like EDA's oversight over tax incentives?

A. Well, obviously, I think all of our audits are important, no matter what agency or program entity we are looking at.

Certainly in this case, there was a compelling reason to perform this audit given the amount of money at issue, the fact that taxpayer funds are, you know, tangentially implicated by these programs.

So when we receive an executive order from the governor, we evaluate that to determine if it is an appropriate project for us and then initiate it with

P. Degnan

the scope that we initiated in the time period that seemed to be relevant.

Q. And did you look at every one of EDA's tax incentive programs?

A. We looked at five that are outlined in the report. If there were others, I'm not aware of them. We looked at the two programs that were specified in the executive order which was Grow New Jersey and ERG. And the executive order also suggested we look at predecessor programs, so we included three predecessor programs in our analysis.

Q. Did you look at -- during the course of your audit, did you look at every tax incentive award in the program, or was there some methodology for focusing on some sort of sample size?

A. We created a sample, what I will call a generically selected sample. We didn't want to be in a position where we were looking at every single recipient or awardee over the course of the five programs.

P. Degnan

Q. So roughly, if you know -- if you don't know, let me know. This is not a memory test -- but approximately how many companies in those five programs actually received money? I'm not saying ones that were approved, but didn't receive money. Do you know approximately how many companies received money from those five programs?

A. I can tell you that within what we discussed in the report, we started with a pool of a thousand companies that had been approved, and I forget -- if I misstate any of this, Kevin or somebody can correct me. We started with a thousand companies that were essentially approved.

We wanted to drill down and look at companies that had met their obligations and had received at least one award payment as a result of that approval. So that brought us down to 401 companies or awardees.

And that was the pool from which we selected -- actually, we selected 42

P. Degnan

companies from that or awardees from that pool. EDA provided us with six additional awardees as a result of our request that they, early on in the process, give us some sample files across the five programs. They provided us with six files. We incorporated those in the 42 that we selected, giving us our sample of 48.

Q. That's fair enough. Let me break that down a little bit.

So the six that EDA provided, I'm not asking you who they are, but is that somewhere documented in your files what those six companies were?

A. I'm sure it is. I can't -- I can't say with absolute certainty, but I'm sure that is in the file.

Q. Do you have any --

A. In other words, could we distinguish between the 42 selected and the six that were provided to us?

Q. I'm going to get to the 42 in a second.

A. Yeah, we can actually --

P. Degnan

Q. Do you -- as you sit there right now, do you know why the EDA picked the six companies that it did?

A. I do not.

Q. And the 42 companies, can you give us just a general understanding of why those 42?

A. Sure. So we wanted to get -- and this is what I -- really the definition of a judgmental sample. We wanted to get a representative cross-section of the awardees across the five programs with a varied degree of the amount of the award, size of the program and the geographical location of the program. We just wanted to get a fair cross-section of the awardees in each of the five incentive programs.

Q. I take it that probably happened in the level below you in your organization?

A. Interestingly enough, the -- I'm not an auditor, so a lot of what happens in the audit process is left up to the career employees at the office who are certified

P. Degnan

auditors, in many cases CPAs, and I let them do their jobs.

Q. Of course. And if you don't know the answer to this question, it's fine. You have just, in case you do, do you know whether or not the EDA was consulted or had any role or input into the decision of selecting those 42 companies?

A. My understanding is they did not have any input in that.

Q. So was the EDA required to cooperate with your audit?

A. Yes. Our statute requires auditees to cooperate with our audit function by the documents we request. It is something that I wouldn't want to personally litigate, not in this case, but it has been upheld by courts in New Jersey as well.

Q. Couple of things and then I can get to the other topics.

When you conducted or when your staff conducted the audit, were they and you aware that about two years prior to the

P. Degnan

completion of your audit, so I'm talking now in January of 2017, that the office of the state auditor had also done, with a different methodology, but had also done an auditor report?

A. Yes. I am aware of that.

Q. Do you know whether or not they factored that report into some of the analysis and recommendations that ultimately resulted in your report?

A. No. I mean, the answer is they did it not. The report, the auditor's report was obviously a data point. It was considered by the audit division in the preplanning process of our own audit. We were well aware of their findings, the auditor's findings.

We also had some information about the corrective action plan that the EDA had put in place as a result of that audit. But we recreated our own scope, created our own methodology. We did not rely on any of the data or findings that the auditor concluded or reported on.

P. Degnan

So it was a piece of information that we had, but it was not used as an audit tool, I would say.

Q. Maybe -- let me be more precise in my questioning, because I think maybe the question I asked you wasn't as clear as it could have been.

What does it say to you as comptroller if you are looking at an audit and you see that the auditee had a prior audit, whether it was your office or another office, like office of the auditor, there was a corrective action plan, and then during your audit, you found that the auditee had not complied with the prior corrective action plan? What does that say about the strength of the internal controls of the organization that you can draw a conclusion based on that scenario?

A. I'm not -- I'm either not understanding your question or not sure I can answer that question.

We certainly commented in the report that we believed there were aspects

P. Degnan

of the corrective action plan that may not have gone far enough. But I'm not sure what I would say beyond that.

Q. So I guess, I don't want to spend too much time on it. If this is not clear enough, I will move on.

Does it say anything about the internal control structure of an organization if you find that, over the course of multiple audits, there is not action taken to correct the problems that were identified in prior audits?

A. If you are asking me for a value judgment as to how good they are, that's not something I can provide. We made the findings we made in the report, and I think I will confine myself to that.

Q. Turning now back to your audit, just so we are clear about what's happening now, and I'll get back to this later. Is EDA doing anything right now about the conclusions of your audit?

A. They noted in their -- they. It's response to our draft -- in our

P. Degnan

process, the auditee is entitled to see a draft or discussion draft of the audit before it is released to the public, and they are allowed to respond to findings if they wish. We evaluate those responses and include them where necessary.

So in the EDA's response to the audit, there were certain things that they pointed out that they hadn't been doing. Some of them were directly in response to the findings that we had previewed for them. Some were in response to the state auditor's report.

What they have been doing since the audit is -- since our audit process was concluded, at least this stage of the audit process was concluded, I couldn't tell you. But I expect in the next couple of weeks you will be getting a formal corrective action plan from them, so I will have a better sense of what their forward-looking approach is going to be.

Q. Thank you.

After that corrective action plan

P. Degnan

we may have you, ask you back for another hearing, but we will put it to the side for now.

Let me ask you a specific question, which is, is it fair to say that during the course of an audit and this is something I think we spoke about a little bit earlier, during the course of the audit, your team works relatively closely with whatever the audited -- the auditee agency is to gather the information, understand that information, request follow-up information and the like?

A. Yes. It varies from project to project, how closely we work with them. This is not intended or designed to be an adversarial process. We are all just hoping that we can achieve a smooth exchange of information with the auditee.

In this case, I will say to you that, given the scope of the audit, we did work very closely with EDA throughout the course of the 50 weeks or so that the audit process ran. So in this case, we did work

P. Degnan

closely with EDA.

Q. Now, during a performance audit, is it part of your policies or is it a practice for your audit team to ask the auditee agency whether or not there is any litigation that has been filed within a certain time frame that might be relevant to the subject of the audit?

A. Yes. I apologize. I gave all my copies of the pamphlet away, but our opening conference, that's a box that we check during our opening conference in the audit. We ask the question as to whether or not there is any pending litigation or adverse information that we need to be aware of.

Q. Do you see that I put a binder in front of you? You don't see that binder?

A. I do now.

Q. There is a binder.

So I thank -- I will get to it in a second, but just so you understand what is in the binder, tab 1 is findings, tab 2 has your report, tab 3 has the state

P. Degnan

auditor's report, tab 4 has the New Jersey EDA response to your report that was filed on January 3 of 2019, tab 5 has the pamphlet that you were just referring to, and tab 6 has something that I believe is called a management representation letter.

A. Yes, I believe we provided that to you the other day.

Q. Yes, thank you.

OK. So if this is part of the process, can you kind of help the public understand why that question is -- why is it asked and why is it important?

A. You know, I think as a general practice, for one thing, you always want to have more information than less, I think it is a good catch-all question at the first stage of the audit process is gathering as much information as possible to inform the scope, what the scope of the audit will ultimately be.

So it's a question that -- again, I'm not an auditor, so I'm giving you my general impression of this. It's designed

P. Degnan

to elicit information that might potentially lead to an issue that you would want to look at in a performance audit. It's fertile ground for leads.

Q. And so if you are advised of any litigation that has something to do with the subject matter you're auditing, is it fair to say that it could impact the scope of the audit or what kind of other information is asked for?

A. It could. And it could not. It depends.

Q. So I'm going to try to streamline this a little bit.

Is it fair to say that over the course of time, your staff asked EDA a number of questions, including the question about whether or not there had been litigation?

A. I know that that came up during the opening conference. I can't tell you whether it was asked again, how many times it was asked again. So I -- you know, beyond the opening conference, I don't have

P. Degnan

any specific information about it.

Q. As you sit here now -- and again, this isn't a memory test -- do you know what the date of the opening conference was?

A. I do not.

Q. Do you know what answer the EDA provided to the question of, "Is there any relevant litigation?"

A. My understanding is they didn't provide a substantive answer at that point. There was a response that was designed to better understand the scope of the request. In other words, we are not really interested in whether or not there was a slip and fall at EDA's facility that resulted in a lawsuit. We were able to narrow the scope of the question for them in the sense that we were only interested in litigation that touched on five programs that we audited.

Q. Again, if you don't know, please don't answer. Do you know whether or not EDA, at that first meeting or thereafter,

P. Degnan

advised anyone from your staff whether or not there is pending litigation that concerned the tax incentive programs at issue in your audit?

A. Based on the information I have right now, we did not receive that information.

Q. So help us understand then how this all culminates, whatever important representations that are made during the course of the audit, what is the normal process for documenting and memorializing that at the completion of the audit?

A. Right, so that's the management representation letter you referenced earlier. At the conclusion of the audit, just to wrap things up, essentially, we, the comptroller's office, drafts language designed to capture our understanding of the representations that have been made to us throughout the audit process. This is a standard part of the audit process.

We send that language to the auditee. If they agree with that language,

P. Degnan

they put it on their letterhead, sign it, their representatives, the auditee, signs it and sends it back to us. And like I said, it goes in the file.

Q. So is it fair to say that that letter essentially memorializes the various representations and warranties that were made during -- to the audit team during the course of the audit?

A. That's the intent of the letter as I understand it.

Q. I would like to turn your attention to tab 6 of your binder, please.

Mr. Comptroller, let me just stop you one second and say it's very, very important to us to not engage in the practice of publicly shaming people. I'm going to ask you to not name the signatory of this letter, that we will have a process for that after we get all the facts because we are at the very beginning, and there could be a completely innocent explanation to what we are about to learn.

I just want to make one thing

Page 102

P. Degnan

clear. Could you look at the signatory on the second page. Is it fair to say that that's not the CEO, that that individual who is named is not the CEO of the EDA, Jim Sullivan?

A. That is not Jim Sullivan.

Q. Thank you.

So can you just go back to the first page and tell us the date of the letter.

A. January 3, 2019.

Q. And this is a signed letter, so this represents the final?

A. The signed letter on the EDA letterhead.

Q. Sir, just so that we understand the introduction to the letter, can you just please read into the letter the top highlighted portion of page 1?

A. Let me put on my glasses.

Q. I'm taking them on and off myself, so I sympathize.

A. "In connection with your audit with the New Jersey Economic Authority as

Page 103

P. Degnan

of January 3, 2019, and for the period of January 1, 2010, to January 3, 2019, we confirmed to the best of our knowledge and belief the following representations made to you during your review."

Q. Sir, again, just to break it down for me, this is the EDA saying essentially, "We have already told you these things, all relevant to the period between 2010 and 2019, and now we are memorializing them here."

Is that a fair summary of that paragraph?

A. It is a fair summary.

Q. So could you please go down to the bullet that is number 5 -- it should be highlighted on your copy -- and please read that bullet into the record.

A. "We have no knowledge of any fraud or suspected fraud affecting the entity, involving management, employees who have significant roles in internal control or others where the fraud could have a material effect on the financial records or

Page 104

P. Degnan

financial system."

And then a second bullet, "Allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators or others."

Q. Now, that second paragraph, is that also under the "we have no knowledge of any"?

A. Yes.

Q. So, in other words, representation is we have no knowledge of any allegations of fraud or suspected fraud, et cetera?

A. Yes.

Q. And then if you could finally just read the last one, number 8.

A. Number 8, "We have disclosed all details concerning any pending claims, assessments and litigation against us of which we are aware and which would have a significant effect on financial operations."

Q. So just to be clear, if there had

Page 105

P. Degnan

been a lawsuit filed in 2015 that was active at the time of the audit that had to do with tax incentive programs, would it have actually been responsive to the staff's requests and, therefore, relevant to the representation letter filed on January of 2019, January 3 of 2019?

A. I would say that I would have expected that that would have been disclosed. I don't know what EDA's understanding of or reading of the language of this letter required or would have compelled them to do.

Q. Again, I just want to state so the record is abundantly clear on this, I agree with you wholeheartedly that that is not a question for you. And I confirm with you wholeheartedly that we are at the beginning of the investigation, and we want to be fair to everyone.

And part of this process is getting the information out there and then testing it, and we are not at the testing stage yet.

P. Degnan

I'm really just asking about your -- you're the chief guy here, and so I'm asking you, in this language, if there had been a lawsuit filed in 2015 that actually alleged fraud at the EDA with respect to the programs that you were auditing, would you have wanted to know about it?

A. I would have wanted to know about it.

Q. So in the front of your binder, there is a filed complaint, and I'm going to ask you about that now. And then we are going to move on.

You should see at the center of the top, there is a stamped date by the court. Can you read that into the record?

A. The highlighted date here? Received date?

Q. Yeah.

A. May 11, 2015.

Q. And do you see that it is a legal complaint?

A. That's what it appears to be.

P. Degnan

Q. And does it say in the first paragraph -- I'm just going to try to streamline this -- "Plaintiff was formerly employed by defendant New Jersey Economic Development Authority."

Do you see that in paragraph 1?

A. Yes. Yup.

Q. And then again, just to save time since you don't have the result, I'm just going to read a couple of paragraphs of this into the record so it is clear. If you want to follow along, start at paragraph 14 on page 3.

A. It says as follows: "Applicants seeking funding for tax incentives to locate some or all of its business in New Jersey, instead of another state, were also required to provide data to the EDA that was used to calculate the net economic benefit such relocation would bring to New Jersey. When the analysis showed little or no net economic benefit to New Jersey, EDA executive number 1 would ask plaintiff to change the inputs to the calculation to

P. Degnan

make it show such a benefit. Plaintiff refused to take such improper action. So EDA executive number 1 would do so himself.

"Another requirement of this program was that the applicant had to show that the competing out-of-state location was legitimate and comparable to the proposed New Jersey site. On a couple of occasions, plaintiff notified EDA executive number 1 that the competing out-of-state locations were simply not real. But EDA executive number 1 did not want to know about it, and they were approved anyway.

"Plaintiff complained about these phantom location to EDA executives number 2 and 3 and other executives who attended meetings when these applications were discussed. EDA executive number 1 also qualified many film production companies for tax credits even though they did not meet the requirements that 60 percent of their production costs had to be spent in New Jersey. When plaintiff complained, EDA executive number 1 became very angry and

P. Degnan

yelled, 'You don't know anything.'"

There are several other similar allegations of the conduct that's described in this complaint, but in light of that information, again, let me ask the question, would you have wanted to know about this complaint at the time of the audit?

I mean, again, as a general matter, I would always want to know more rather than less, so I would never say no to hearing about something, but I don't really know anything about this complaint. I don't know how it got resolved. These are obviously, as you know, just allegations. But as a general matter, I -- sure, I would want to know that.

Q. Would your answer change if you knew, for example, that there were depositions in this matter going on during the course of your audit?

A. Would my answer change? No.

Q. That wouldn't change whether you would -- if litigation hadn't been

P. Degnan

resolved, it wasn't 20 years old, if it was directly relevant, again, would you expect that that would be disclosed to you?

A. I would have to think about it a little bit and know more. If the question is, are you aware of allegations that suggest, whether they were substantiated or not, they might have had an obligation to tell us about allegations.

So I would just have to know more before I can answer that question.

Q. Let me then get to your audit plans, if you don't mind.

Can you turn to the audit report which, again, you may have your own copy that you are working from. But it is in tab 2 of the binder.

Here, please forgive me if this is in any way annoying, but I'm really going to try to break down, again, what you said, not in terms of what's behind it, but what it means and why it's important. Those are basically going to be the two questions I ask through a lot of this.

P. Degnan

So first of all, as a general matter, are you confident in the conclusions that you or your team drew in the report?

A. I am.

Q. And as we discussed, you are aware that the EDA has responded with a letter that takes issue with some of your conclusions?

A. I'm aware of that, yes.

Q. Have you reviewed EDA's response to your audit?

A. Yes.

Q. So if you would, would you turn to -- again, in the binder that we have tried to flag everything for you to make this as efficient as possible, but if you turn in tab 2 to flag number 1, and if you read the highlighted language that summarizes the audit results and then kind of, once you give that summary, then rather than breaking down the whole thing, which would probably take about four days, and because it is complicated, I'm going to

P. Degnan

focus on just some component parts of the report.

A. OK. So this is the "specifically our audit found" paragraph?

Q. Correct, paragraphs A through F.

A. I'll start with the lead-in, "Specifically our audit found numerous inefficiencies in EDA's management and oversight of the incentive programs. These deficiencies include, A, inadequate monitoring, insufficient oversight and nonexistent policies and procedures that have created controlled deficiencies that weaken the transparency and accountability of the incentive programs and their success.

"B, the lack of an adequate process to assess accomplishments and effectiveness of the incentive programs or to determine whether the state realized the economic benefits asserted by the applicants.

"C, the lack of policies and procedures to monitor awardees'

P. Degnan

performance, i.e., number of jobs created, et cetera, and insufficient documentation requirements for awardees to report specific accomplishments of their performance results. These failures resulted in inaccurate representations of awardee performance to the stakeholders and taxpayers.

"D, a failure to properly analyze recipient performance data to determine whether the incented jobs were actually created or retained pursuant to the award terms. These actions resulted in 2,993 reported jobs that were not substantiated as having been created or retained.

"E, a failure to assess and collect appropriate fees from all applicants and recipients.

"F, inadequate accounting processes and lack of appropriate controls to ensure that the fees were recorded pursuant to generally accepted accounting principles. GAAP."

Q. Thanks for that. Sorry to make

P. Degnan

you read so much. I'm not going to ask you too many questions about the last two conclusions today, but I do want to ask you one question.

As part of the scope of the audit, did you look at why the EDA collected fees from some people and not from others?

A. I'm not sure we got into the why of that question. So I'm -- I would have to look at the report again, and I didn't really focus on that before today because I didn't know we were getting into that.

Q. That was a question I added, so sorry about that. I was just curious.

So I want to first discuss the report's findings about EDA's lack of policies and procedures and internal controls for their incentive programs. So, again, just kind of breaking it down a little bit more and I'll get to the, what does it mean and why.

Can you turn to the second flag in the report which is on page 11.

P. Degnan

Would you mind reading the highlighted portion into the record?

A. Right, this is the header of this section, starts on page 11.

It's, "EDA lacks appropriate policies, procedures and controls for certain administrative actions required to ensure that final approved products meet statutory requirements and objectives of the incentive programs. In addition, EDA failed to comply with statutes, regulations, its own policies or procedures and award agreement terms which resulted in overstatement and overpayment" -- I'm sorry, "which resulted in overstated and overpaid incentive awards."

Q. So I want to break that down a little bit just so that we all understand. Is it fair to summarize that there is -- there are basically two problems you highlight here.

One is a lack of policies, and then one is a failure to follow the rules, whether those rules are in existing

P. Degnan

policies, statutes or other places.

A. That's fair.

Q. Now, I apologize if this is an obvious question to you, but it may not be obvious to everyone else, so I really want people to understand this. You looked at the EDA, you have got 20 people basically doing the same thing, right? They are all engaging in discussions with program recipients and they are gathering information.

Just as a general matter, why is it important to have policies?

A. You know, policies -- well-defined written available policies provide a consistent method of operation for the folks that are responsible for doing the job.

Q. And to the extent that their job is complicated, is it essentially fair to look at policies as kind of like a checklist of everything that you have to do to make sure that there is a process discipline as different people are going

P. Degnan

out into the world doing essentially the same process? Is that a fair layman's description?

A. It certainly could be structured that way.

Q. So when we talk about policies, what we are really talking about are rules of the road to help people understand how to do their job?

A. I can accept that.

Q. And again, the importance here is, if the job is in part making sure that people qualify for tax incentive programs in good faith and that they are compliant with their obligations, if there aren't clear policies, as you point out in the report, there is the real threat of overpayments and improper payments. Is that fair?

A. I think it's fair to say that that was our conclusion here.

Q. So I want to get into one example of that. I don't want to belabor the record with 100 examples, but there is a

P. Degnan

couple of key things that I think are important for people to understand.

So to introduce this topic, if you would go again on page 12, this is flag 3, there is some highlighted text in there and I would like you to read it into the record and then I have some follow-up questions.

A. OK. So this is a, from a list of findings that we contend support our conclusion. "This conclusion is based on our finding that EDA did not, A, have in place the policy setting forth the process for establishing an adequate baseline in employment numbers at the time of application, i.e. pre-award stage for all programs."

Q. This finding, this deficiency, applies to those programs where either creating or retaining a job is part of the program requirements?

A. Yes.

Q. And again, just to be as simplistic as possible, some of these

P. Degnan

programs, not all of them, but some of these programs are essentially a trade-off. We will give you tax incentives, as long as you keep or create new jobs, is that a fair statement?

A. It's enormously more complicated than that, but as a general proposition, some of the programs operate that way.

Q. Thank you. I mean, in addition there are other programs, but Grow New Jersey works that way at a high level, and BEIP works that way at a high level, correct?

A. I believe that's right.

Q. So can you just help the public understand very fundamentally, why is it important at the beginning of the application process to establish an applicant's baseline employment numbers?

A. It's the same reason you take the kids to get a baseline concussion test before they play sports. You want to have a starting point so that you can assess any changes that occur with time.

P. Degnan

Q. Great metaphor.

A. Feel free to use it.

Q. Thank you.

So really, eventually, what you are going to be measuring is either the jobs that they are retaining, you would want to identify the at-risk jobs, is that right?

A. The award -- the applicants have to identify the number of at-risk jobs.

Q. And again, we are going to talk about this in some detail later on. The applicants have to provide that, and is it also fair that it's incumbent upon the agency to do more than just accept the data and make sure that they verify the data?

A. Yeah, I mean, that's a fair characterization of probably the largest finding across the board here, is that we -- we are critical of EDA's reliance on recipient-reported data, and we believe that there is more that can and should be done to verify whether or not that data is accurate.

P. Degnan

Q. And we will get into some more examples of that, but I was giving the example of at-risk jobs being retained. But on the other side of the coin, when someone is growing a job, if you are going to monitor their compliance, you have to know the baseline so that you can understand that they are, in fact, keeping the additional jobs that they agreed to as part of the program requirements. Is that a fair summary?

A. Yeah, I think the baseline is important whether it is a retained job or a created job.

Q. So again, this may be an obvious question, but why is the lack of a policy around the baseline award, why is that a problem?

A. If you don't have a starting point, you have nothing to measure performance against.

Q. And if there is not a -- and the policy is -- how does the policy interact with knowing what the baseline? Help

P. Degnan

people that don't understand the way policies work, understand as someone from EDA sitting there trying to do his or her job, what the lack of a policy means across that department that's responsible for monitoring.

A. You know, if the practice of getting the baseline numbers is not administered across the board with all applicants, then you have incomplete files, you have some files with good data points, some files without. And you can't then do a comprehensive check of performance at a later time. At least you can't do a full check.

Q. Is it also a danger that, if there is no policy, that people are going to be doing it inconsistently and potentially verifying in different ways with different results, over the course of their -- the applications that they are reviewing?

A. There is certainly that potential. Although, look, we know that

P. Degnan

even if there are policies, there is always a risk that that's happening as well. But the clear written policy that provides guidance to employees to have to do their jobs probably limits those instances where someone might deviate from best practices.

Q. So it is obviously not your job as the comptroller to tell them what their policies should be. Is that a fair statement?

A. Yes.

Q. It's incumbent upon them to have the policies and enforce the policies and to audit to make sure that people are following the policies?

A. Right. We identify the problem, we identify a place where, for example, in this instance, where a more robust policy is warranted. It's up to the auditee then to decide how to implement that representation.

Q. So I asked you earlier about the state auditor report. I would like to tie this issue back to the state auditor report

P. Degnan

if I can.

It's at tab 3 of your binder. And you will see that, hopefully helpfully, we tabbed it as flag number 1. Would you please just read the highlighted information into the record.

A. Yes. Just to be clear, this is the state auditor's report, not my office's report.

Q. Understood.

A. So it's page 4 of the state auditor's report. The highlighted language is, "Procedures need to be implemented to verify the existence of at-risk jobs prior to grant approval."

Q. So, again, this was about two years before you completed your report. Was this essentially the same or a similar finding as the finding that you came to two years later?

A. It certainly appears to be, although I'll say I don't know much about the testing process, what's behind the words here, but the language certainly

P. Degnan

appears to be similar.

Q. Now, one general question, the finding that you made about the baseline numbers, was that limited to one program that was a jobs retention program, or was that across all of the job retention programs that your office reviewed?

A. I don't know that I have an answer for you on that right now. That's something I think I can probably check on and get back to you.

Q. OK, that would be great.

So I want to just -- I'm not going to do this much. But I want to go to EDA response and just talk about that a little bit.

It's at tab 4 of your binder. While you're getting there, I would just ask a question: I assume over the course of your tenure you've conducted many, many, many audits?

A. Yeah. I wouldn't say I conducted them, again, because I'm not an auditor. But I have presided over them, I guess, and

P. Degnan

my name, for better or worse, goes on the cover.

Q. So I would just, out of -- so that we understand, is this the -- this letter that you have in front of you, do you see it?

A. I do.

Q. Will you identify it for the record, please?

A. This is the January 3, 2019 letter from EDA to me in response to the discussion here.

Q. And this one, is it fair to say that this one actually was signed by the then -- the now EDA CEO Tim Sullivan?

A. Yes.

Q. Is this kind of response to an audit a common thing?

A. Every auditee has the opportunity to respond like this. Auditees respond in various different ways to our audits.

So this was a thoughtful, comprehensive response that agreed with some of our findings, took issues with

P. Degnan

others. So from that standpoint, it wasn't dramatically different from what we get in every audit.

Q. Sir, can I just ask you to turn to page 5. And this, I think, unless I'm misunderstanding something, is the EDA's response to the baseline jobs policy being lacking. And there is some highlighted language there. And if you don't mind, it's a little bit long, but I'd ask you to read that into the record.

A. Can I read the entire thing? I don't want to leave out the beginning of the sentence.

Q. Comptroller, you can do whatever you want.

A. "As part of this continual evolution to assist in understanding the baseline jobs for the company, the NJ EDA began collecting employee information worksheets for all new Grow New Jersey businesses in mid 2017 to establish baseline employment which then is reviewed as the business certifies their employment

P. Degnan

numbers at completion of the project. This was a result the recommendations of the office of the state auditor. The requirement's baseline information supplements NJ EDA's current policy of requiring hiring dates for each employee."

Q. Then, sir, let me just ask you something, a couple of questions. First of all, do you know whether or not EDA ever specified when within 2017 it actually started using these worksheets?

A. That's the only information I have, when we start, mid 2017.

Q. Did you understand the statement in EDA's letters to be that they started using these worksheets across all new applications starting in whatever that mid point was in 2017?

A. It appears they started using them for all new Grow New Jersey applications for '17. That's what it appears to be.

Q. So before I move on to the next topic, just a couple of questions. Do you

P. Degnan

know whether or not your staff asked for examples of those worksheets?

A. I know that we have a limited -- my understanding, a very limited number of these. We also -- we did specifically ask for a blank template as to what these would look like. But as you can see from the date, they were starting to be used, this fell outside the scope of our testing period, so we didn't -- we didn't test them on anybody. We just used them for information to track.

Q. Were the samples sufficient for you to draw any conclusions at all?

A. No.

Q. Having looked at the template and the --

A. Can I correct that for a second?

Q. Sure.

A. Other than, you know, I will say that while we drew no formal conclusions as a result, it does appear that, again, these worksheets are being submitted with recipient-submitted data, and in line with

Page 130

P. Degnan

our recommendation, we would suggest that if they are going to be relied on, there should be a testing process to make sure that that data is accurate and fairly presented.

Q. Another version of trust by verifying?

A. Sure, yeah.

Q. And thank you. Let's move on to the next topic.

So I want to ask you some questions about that report's finding with respect to net benefit analysis. But before I do that, I would put the terrible onus on you, if you'd describe if you can, in layman's terms what the net benefit analysis is so that the public can understand it and why it's important.

A. The net benefit analysis is an evaluation of the benefit that the state will receive as a result of a given project, whether that's jobs retained, jobs created, capital investments. That's about as far as I can go.

Page 131

P. Degnan

Q. But really, this is a way of measuring at the time of the application, what the benefit of the bargain is to the taxpayers. Is that a fair way to describe it?

A. Yes, yeah.

Q. Is it also fair to say if this is not carefully calculated and carefully monitored during the life of the award, there is the risk that taxpayers are not getting the benefit of the bargain?

A. I mean, we concluded that the information as presented in the initial net benefit analysis needs to be verified and needs to be accurate, make sure it is accurate. I think there should be a testing process going forward to make sure that the promised benefit is, in fact, being received.

Q. So why don't we begin that discussion then. If you can, go to again in tab 2, this one is identified as flag number 4. And there is, I think, a highlighted paragraph there that you can

Page 132

P. Degnan

read into the record. I'll have you read a couple of short paragraphs in, and then I'm just going to ask you some questions about the whats and whys.

A. This is from page 15 of our report.

Q. I believe it's flag 4.

A. "We found several deficiencies related to EDA's economic benefit analysis of our sample projects which are set forth below. We note that these deficiencies for the most part were traced back to failures in the EDA's assessment of a project's NBA," or net benefit analysis.

Q. Sir, let me first ask you if you can, explain to us in simple terms what this means.

A. I mean, it means pretty much exactly what it says, we found deficiencies in the preparation and analysis of these data points.

Q. But what is the significance of that in terms of the net benefit analysis? If there are deficiencies in the

Page 133

P. Degnan

calculations, what does that mean?

A. It could mean any number of things, one of which is that the benefits being promised to the state isn't actually going to come to fruition or that it would lead to a miscalculation of the incentive, any number of problems.

Q. But, again, just to summarize the risk -- and if I am summarizing this unfairly, I'm sure you will tell me -- the risk is that in each of these situations that the taxpayer is not going to get the benefit that was promised. Is that a fair summary?

A. I would say there is potential that the taxpayer doesn't get the benefits promised.

Q. So then if you would go flag 5 and go to the highlighted at paragraph F, there is one specific example that I want to ask you about in terms of deficiencies in terms of calculations.

So I apologize if it's a little bit on the long side, but if you could read

P. Degnan

that in, I'd appreciate it.
A. This is one of the specific examples that we highlight within the section, Section F, "Did not provide the complete net benefit analysis for one HUD project in our sample. That project was approved based on the creation of an estimated 212 new jobs, for a total incentive award valued at 41.7 million dollars.
"EDA was not able to recalculate the net benefit analysis based on partial information that was available in the project file. As a result, OSC was unable to verify the data inputs or determine whether the net benefit analysis was properly calculated. The HUD statute and regulations required that new jobs exceed the statewide employment level in the period before the award was approved.
"Our audit found, however, that recipient's statewide employment actually declined during the award performance period between 2010 and 2017. This

P. Degnan

particular recipient has received incentive awards totaling 29.2 million dollars through 2018."
Q. Sir, just, again, to break that down so the information is accessible, let me just ask you a couple of things.
Whoever this company was, they got approved for 41.7 million dollars worth of tax credits. Did I understand that correctly?
A. Yes.
Q. And as of the time of your audit, they had actually been paid 29.2 million dollars of that 41 million?
A. It looks like that's right. The recipient received incent awards totaling 29.2 million.
Q. And the problems that you found in this one example were that they didn't have adequate information to do the net benefit calculation in the first place, correct?
A. The -- let's see. It appears that there was not sufficient information

P. Degnan

to do a recalculation based on the information which was in the project file, so we then couldn't go back and verify whether the original NBA was accurate.
Q. But there is a second problem here, isn't there, Comptroller, which is, this particular program has a requirement that employment levels have to stay statewide at a certain level. And apparently, do I understand your conclusion that, unbeknownst to EDA, their employment had actually declined and nobody at EDA was checking?
A. Well, I would say that we did find the decline. We did not make a conclusion as to whether or not EDA was checking. I can't speak to that.
But it appears based on our data that the employment level was declining.
Q. So just so I'm clear, if, in a hypothetical situation, if EDA found that someone was out of compliance, and we are going to get to this actually in the next topic, they were noncompliant, which I

P. Degnan

think is the phrase that you used in the report, meaning that there is some aspect of the requirements that they are not complying with, what is your general understanding of EDA's three options for dealing with a noncompliant company?
A. So I -- I mean, from the outset, I think that's difficult. That would be defined in the award agreement between EDA and the awardee, but generally speaking, you could suspend the awardee, terminate the employee -- the employee -- an awardee, or you could initiate a claw back process and try to retain or recoup some of the awards that had already been paid.
Q. So I guess two natural questions probably come to mind out of that. One -- and if you don't know the answer, please just say you don't know the answer, but I would ask this to go in kind of the follow-up category.
Do you know whether at the time of your audit, EDA had initiated any process to suspend, terminate or claw back

P. Degnan

money from this company?

A. From this company? The company in section F here? As I sit here right now, I don't know.

Q. And just so people understand what a corrective action program is, when you identify something like this in the report, where you are saying the company is not in compliance or noncompliant, is part of the corrective action that EDA has to now go back and opt which of those things -- I guess the fourth option, they could, I suppose, renegotiate. Right?

But do they have to take some action with respect to the corrective action plan for each of these times where you found that there was an improper payment or an overpayment?

A. You know, have to? I don't know. I would say that our recommendations are more forward-looking and designed to correct problems we identify going forward.

So there is no -- there are no defined aspects of the correction --

P. Degnan

corrective action plan that would necessarily require them to go back and do a look-back.

Q. I am sorry, I know that I didn't -- we both know, we have met before, right? I've interviewed you. I mean, we can state for the record that you provided, because you are very busy and these are complicated questions, it would be completely unfair to surprise you, so we provided you with some of our questions.

I want to go off the questions that I put, and if you can't answer the questions, that's totally fine.

But is there a mechanism then where, somewhere in the government, somebody says to EDA, to the extent that you go back and look and you agree with the comptroller and these companies are not compliant, you have to make an election. You don't have to elect which one of the things, but you have to take action with respect to the companies that, for which they either got an improper payment because

P. Degnan

there is not enough verification or there is an improper payment for a mistake like these? Can you answer that?

A. Is there a mechanism? I can tell you that we don't have the authority to insist that that be done. So it's really up to the agency and -- you know, the executive branch at large to make the decision.

Q. OK, that makes sense.

So I'm -- you will be happy to know I'm near the end.

I would like to discuss your report's finding with respect to EDA's process for the management and oversight of the incentive awards.

So we just talked about this a little bit. So that there is no room for doubt in a public's mind, just define what your report meant when it was talking about identification and action with respect to noncompliant companies.

A. So we did find some examples of companies that hadn't met, or awardees that

P. Degnan

hadn't met their end of the bargain, and we viewed them as noncompliant awardees.

Q. And again, just to be clear, I don't want to be redundant, but three of the options available in a noncompliant situation are suspension, termination, clawback or a combination of those?

A. Right, those are the three possibilities I'm aware of. There may be others.

Q. OK. Sir, there is one topic that you talked about earlier, and I just want to make sure the record is clear about this. Is there a statutory requirement that EDA monitor the performance with all of these different tax incentive programs? Is that actually something the law requires them to do, or is it just principles of good government that dictate that they should?

A. Yeah, I discussed this one more generically. There really isn't a statute, section or language that sets the parameters for the amount of oversight, the

P. Degnan

manner in which oversight is conducted. So our findings were much more based on best practices, good government ideas, and just get a sense that any agency that has the responsibility for oversight of this amount of taxpayer funds or tangentially impacts taxpayer funds has an obligation to have a robust oversight program.

Q. So is that another way of saying that one possible fix to the problems that the auditor found, the state auditor and the problems that you found, is that in any forward-looking litigation, there is actually a provision that specifies exactly what the agency needs to do to monitor company compliance with tax incentive programs?

A. Any forward-looking legislation? I'm sorry.

Q. New legislation.

A. New legislation, it certainly could be built into it. I hesitate to opine as to whether or not that's appropriate. I think there is always a

P. Degnan

degree of, you can certainly make the argument that there is a degree of flexibility that you want to leave in the hands of the agency to react to conditions that they would be more quickly able to adapt to than going through the legislative process for a fix. But certainly something worth considering.

Q. Thank you. Let's turn to your findings then with respect to this, and if you go to page 23 of your report and you will see, I think that it is at flag 6, there are two of the examples that you list here that I just want to ask you a couple of follow-up questions.

Would you mind just reading the first highlighted paragraph and stop, and I'll ask you a couple of questions, and then we'll go to the second.

A. Sure. This is page 23 of the comptroller's report of our audit. "The sample projects found several instances where the EDA failed to take any action when recipients failed to meet the terms of

P. Degnan

their award agreements. Specifically, one BRAG recipient had not submitted the annual reports for two reporting periods. One was more than a year late, and the other was a few months late."

Q. So let me just stop there. This kind of gets to the heart of what I was asking about before.

Is it fair to say one general finding was, in that circumstance where there was noncompliance, that EDA was generally not taking action to cure, whether it was through renegotiations, suspension, termination or clawback, EDA was not taking action to cure those problems within your sample set? Obviously, I'm not asking you for stuff outside of the sample set.

A. I think that's fair to say within our sample set.

Q. And then the second paragraph, if you don't mind?

A. Sure.

"We also found two BRAG

P. Degnan

recipients and one Grow New Jersey recipient failed to meet certain employment levels as required by their board agreement letters and/or project agreement terms."

Q. OK. So I want to ask you about this, and I want to unpack this a little bit because I listened twice, actually, to your testimony before the legislature, and one of the things that the legislators, I think, focused on was the fact -- and it is important for people to understand that, a company says a job is there.

What your audit did, if I understand correctly, is not determine whether the job was there or not. It was to determine whether or not EDA collected enough information to verify that the job was there, and if they didn't do that, you would call that an improper payment. But that has nothing to do with whether or not the job exists or not. It has to do with EDA's verification process. Did I explain that accurately?

A. It was a lot of words, but I

P. Degnan

believe that's right. It's -- right, I mean, we did not conclude at any point through the audit process whether these jobs did exist or didn't exist.

What we concluded was there wasn't sufficient information, or there were gaps in the information that didn't allow us to say conclusively one way or another.

So if a payment was made or if an award was -- the benefit was conferred to an awardee, based upon a job that we couldn't verify, then we would consider that an improper benefit for that job.

Q. Got it. OK.

But this language seemed different to me because here it looked like you were drawing a conclusion about the existence of jobs. So can you just read that again and then tell me if I am reading this correctly, that this is qualitatively different? Is this an example of you actually finding that there is a company that didn't meet their employment levels?

P. Degnan

A. This relates more to the annual report. I would have to -- I would have to go back and get a little more information on that.

I assume you're talking about the second sentence, and I see what -- to understand the basis for your question, I would have to go back and get a little more information on that.

Q. Could we make that request to you. Could you follow up on that?

A. Sure.

Q. I'm not saying that you necessarily provide us with this, but someone in your office knows exactly what company this is?

A. I would assume so. Yes.

Q. And again, just to punctuate this point, part of EDA's corrective action plan is likely not going to be a plan to go back and make sure that these companies repay if they are noncompliant? That's not something you can force them to do.

A. I can't force them to do it. But

P. Degnan

they might certainly incorporate it into their plan. I don't know. I haven't seen it.

Q. OK, I am going to streamline some of the rest of the questions, and because I think this is something I would like you to follow up on, assuming that I understand this correctly.

Is it fair to say that one of your primary conclusions was that there is roughly 3,000 jobs -- really, it is 2,993 -- jobs that, in the estimation of your audit, were not verified or sufficiently verified such that a payment was proper for those jobs?

A. Yes, but it does warrant a little bit of explanation if you don't mind.

Q. Please.

A. Just to clarify the time period. And in reading the report, we didn't break it down on this level. So I understand that, it's not abundantly clear from the lines of the report.

It's 2,993 jobs, not on a yearly

P. Degnan

basis. It's over a period of time with an ever-fluctuating amount of jobs from year to year that either need to be retained or remain.

So -- again, I apologize, I don't know if I am explaining that very well. But it is a much larger universe of jobs that we found the 2,993 were not verifiable out of then than simply the yearly requirement of a single year.

Q. OK, I think that's clear, but I'm going to unpack it a little bit.

You said that this was total jobs over a period of time. As you sit there right now, do you know what period of time it was?

A. So I'll speculate, I believe it was over the course of the entire audit sample period which was, I believe, from 2005 to 2017. But I -- if I am wrong about that, I'll clarify.

Q. So I'm going to ask you a couple of questions punctuated with a, could you help us understand this. You quantify --

P. Degnan

your report does a wonderful job at quantifying, and I think that's really important for people to understand, how much money are we talking about?

But the one thing that the report didn't do is to quantify the tax cost for this roughly 3,000 jobs, right? Did I understand that correctly, that there is not a point in your report where you say, OK, these were improper payments which means money went out and there is lack of money coming in, and the tax cost of that to New Jersey's taxpayers is whatever the dollar amount is.

A. That's right.

Q. That's right. OK.

And do I understand correctly that the tax cost per job is really a variable of what program was involved, whether it was a retained or a new job, because there is a big difference in the tax cost of that, whether it was in Camden or in one of the northern counties? Do I understand that there are different

P. Degnan

variables that impact the tax cost per job?

A. We didn't do that calculation. So if you are representing that, I have no reason to not believe you, but I don't have any information on it.

Q. So here is my question to you: Do you think after we are done here at some point in the next couple of weeks you could ask your staff to quantify that amount so that there is some transparency to how much money that cost the taxpayer?

There is 3,000 jobs over the course of that period of time. Is that a calculation you think your staff can and would do?

A. I don't know. I don't know that we have the data to do that. I mean, based on our conversations, I believe I know where you're getting some of that information from. That's not from us.

If we were to do that calculation, it would be relying on information that we did not test or verify. There is no -- as far as I understand it,

P. Degnan

and I will confirm this, we have nothing in-house at the comptroller's office that furthers that calculation.

Q. Is that the reason that you didn't quantify it in your report?

A. Yeah, I -- I can't really speak to why we did or didn't expand on the finding.

Q. Just to bring this topic to a close, is it fair to say -- I will ask some leading questions here so we can move on -- is it fair to say that for those people that read the audit report this shouldn't be a surprise because even the auditor found, as you pointed out in the report, that back then, two years earlier, there was still a significant number of jobs that were not being verified and for which there were improper payments?

A. Again, without having a complete understanding of the auditor's report, the state auditor's report, it is hard for me to compare our findings with their findings. But as I discussed earlier,

P. Degnan

there do appear to be some similarities.

Q. Let me just then ask you to go to tab 3, flag 2, and you will see that there is a highlighted paragraph there, and I think this is the last time I'm going to ask you to read into the record. Could you read that for us?

A. So again, this is from the state auditor's report. Page 5, "Our review of another business that received a BRAG grant in 2009 for retaining the 500 full-time positions disclosed that 52 of the 500 employees purported to be filling the positions as of December 31, 2009 only had earnings in the fourth quarter of 2009. We could not determine if the 52 employees were replacements, seasonal hires or regular new hires employed at the end of the year just to fulfill the grant conditions since the employee list received for 2009 only contained the names of 500 individuals."

BY WITNESS' ATTORNEY:

Q. So that's the highlight, I put a

P. Degnan

stop there?
A. You did.
Q. So this is the last topic I want to ask you about, which is obviously this is similar to, not the same as but similar to what we found in the report.
But one of the things that your report found was that you also noticed that there were a number of examples where companies would hire just before the certification deadline.
Do you remember that in your report?
A. We did find that.
Q. So can you unpack that for us a little bit? Because from where I sit, it kind of looks like gaming the system. But from an audit perspective, what's your takeaway from that observation being now made twice for a fairly significant number of jobs at the state level?
A. So I think that the takeaway from that is that we highlighted that it has happened. We did not make a value judgment

P. Degnan

as to what it really means. It may be that the EDA accepted those jobs rightfully. I don't know as I sit here right now.
But I certainly understand your question as to what it might have looked like, and it is something that we would recommend that they examine, get as full information on that as they can before they would certify those jobs as being acceptable.
Q. I want to unpack that. If I misunderstand this, I would much rather know now than six months from now, have moving ground under my feet, and I could misunderstand this.
But when a company is certifying for -- let's just put numbers on it. Let's say a company is certifying for 100 jobs, they're certifying at the end of the year, and they are getting the award for that year in the following quarter. Do I understand the process right?
A. Again, I'll take your representation on that. It depends on the

P. Degnan

program to a certain degree and --
Q. But aren't all certifications the same? Where there is a certification, there is a certification by the CEO at the end of the year. It's for the prior year. And then once the certification comes, you can't get the money until the certification comes, and they get the money the next quarter or thereafter?
A. Yeah, I'm sorry if I misunderstood you.
Q. No, no, we both know that I'm not always very clear.
A. You're fine.
Q. So if a company is certifying at the end of the year for a job and the payroll data from the Department of Labor shows that the person wasn't an employee until some part of the fourth quarter, am I understanding this correctly, that that is not a proper certification for a job because the job came at the end of the year? They couldn't certify that that job was a full-time equivalent, 80 percent at

P. Degnan

the location where they are specified for the entire year? Do I misunderstand that?
A. I hesitate to say whether it is proper or improper. There could be other explanations for why that individual job showed up when it did. There could have been a change in title that maybe result in a -- I'm starting to speculate on why there might be other reasons for that happening.
So I think the takeaway for us was, you know, better to identify the individual jobs with specific identifiers, the names, and I know there is a dispute about whether social security numbers should be used. But a way to conclusively track jobs through the course of time that they are required to be maintained would prevent against any inadvertent problems and would allow the agency to better administer data that is intentionally misrepresented.
Q. I may have a follow-up question for you later, but we can move on for now.
Just to close this out, when is

P. Degnan

EDA's corrective action plan?

A. I believe it's April 9. That's the date that is stuck in my head.

Q. Would you consider, as part of that deliberative process with them, encouraging them to go after the companies that were not compliant if they agreed that your analysis is correct? Is that something that you would consider?

A. Again, we don't really have a mechanism to compel them to do it. Our recourse, if we believe that they are -- with anyone -- not participating meaningfully in the audit process or corrective action process is to report that to the governor.

MR. WALDEN: Professor Chen, sorry I took so long. Any other questions?

MR. CHEN: I mean, there is sort of 30,000-foot question. But I wanted to qualify your extensive experience in state government in general. EDA is certainly not the only state agency,

P. Degnan

state entity that deals with a lot of money or that deals with program recipients and has to determine their eligibility. And obviously one -- one obvious thrust of your report and others is that EDA right now doesn't have sufficient accounting or verification processes by which to verify the eligibility.

We were talking -- part of our, the task force function, we recommend how to fix that. Mr. Walden talks about possible legislation, and you know, as we all know, putting something in a statute, once you put it in there it's not difficult -- it's not easy to change it and, therefore, the agency may want to have some flexibility.

In your experience -- I don't know if you have done other performance audits for other agencies -- are there models also in the state government for how other agencies can deal with this auditing function as a governmental

P. Degnan

entity?

Unlike a private corporation, you don't have an outside auditor come in and perform. Is there an inspectors general or do they have an audit division? Is that something they can handle by regulation that the agency can control?

THE WITNESS: Well, I do know that, based on their response, EDA has created almost an in-house audit division to do more in-depth examinations of applicants. They also have a contract with an independent accounting firm to perform audits. We have made recommendations as to that practice --

MR. CHEN: Just to be clear on terminology, that type of audit is not the performance audit that you performed?

THE WITNESS: I don't know the exact scope. That's one of the issues that we had, was that we would suggest

P. Degnan

a little more independence injected into that process to give the auditor a little more freedom to look into areas that he or she believes are warranted.

But in terms of other agencies we can look to as examples, it brings up an interesting issue. These -- it is one of the frustrations that auditees have with audits generally, is that oftentimes there is a feeling that we don't understand exactly what we are talking about.

I, of course, disagree with that. But that's not to say -- these are enormously complicated programs. There is a tremendous volume of data that has to be analyzed and looked at. This is not easy, and nothing in our audit was ever intended to suggest that this is easy.

So I really think that given the kind of unique nature of these programs, EDA is probably in the best position to come up with a way to

P. Degnan

address the recommendations. We hope that other agencies with similar charters would look at these issues that we found and see if they translate in some way to what they do. But I can't point to another organization and say, you know, we should be doing it that way.

MR. CHEN: Comptroller Degnan, thank you so much for appearing and also thank you for all the cooperation that your office and your staff have given the task force.

THE WITNESS: Thank you, and we are happy to continue to help.

MR. WALDEN: I just I want to -- if I can, Professor Chen, just do two things, which is, first of all, I just want to, for the record, provide information that is baseline because I think it is kind of important for the public to understand the potential cost of these 3,000 jobs.

So again, I think that there is a

P. Degnan

lot more that we have to understand about the jobs, but hopefully there may be another way to peel this out to make sure that the data is tested. If we make a couple of assumptions, I think that we can come to maybe a minimum number, and that is, we don't know which of these programs the jobs were not created as a part of. So that's probably the largest assumption.

So let's just assume for the sake of argument, the one thing that we know is we know what the tax cost of jobs are in the New Jersey Grow program, so let's just do what is probably not true and it may not be conservative, but they are all New Jersey Grow jobs.

But we can make a second very conservative assumption, which is some of these jobs inevitably were jobs that were created, and some of them were jobs that were retained. And there is a significant difference in tax cost between those two, in that, roughly

P. Degnan

speaking, a retained job gets about half of the tax -- half of the tax cost as a new job.

So let's assume for the sake of argument that all the jobs were retained jobs and none of them were new.

And moreover, as I think everyone who understands this statute is aware, the tax costs of jobs created in Camden is significantly higher, and some number of these jobs were inevitably in Camden, but let's just assume that they were only created in the northern counties.

So we have to understand kind of the one thing, I think, to me that was unclear about this, and I think we will follow up with the comptroller about this is, what is the yearly number? But if you assume it is not a yearly number and you assume there is just one value to the 3,000 jobs, if you just do the multiplication, which is under the

P. Degnan

assumptions that I've stated, the cost per job per year is 3,670 dollars. You multiply that by 3,000 jobs, and you get a number of about 11 million dollars. Whether that's the total number or yearly number, it provides some guidance.

The second thing that I think -- that we think that it's important for people to understand is the timeline of the whistleblower case that we were talking about before, and before I say this, I think -- I am going to say this again, we are giving this information so that people understand the context. There may be very, very valid explanations for why the litigation wasn't disclosed, and I think that you have all heard for yourself what the language was, but if somebody can pull up this slide.

Thank you.

So hopefully this is easy to read, and I'm not going to belabor

P. Degnan

this, but I want people to understand the general flow of this.

The complaint was filed in May of 2015. And then as for most litigation, it didn't get active until later. And so the action picked up, so to speak, in January of 2017, which was, you know, right around the time of the state auditor's report.

And then there is something in litigation called "depositions" which means people sit in chairs and have to answer questions, they are put under oath. And starting in January of '17 and then going through January of 2018, there is a series of depositions that were taken both of the plaintiff himself and various individuals within EDA.

Right in the middle of the depositions is when Executive Order 3 was signed, and that was the order that asked the comptroller to conduct the audit. And then it's our understanding

P. Degnan

that the kickoff meeting for the audit happened a couple of days after the signing of Executive Order Number 3.

After the signing of it, and the next couple of weeks, there were a couple more depositions, including the person that was then the CEO of the EDA -- I am sorry, the former CEO of the EDA. The case was actually tried during the audit, and many of the people that were part of the EDA actually were called as witnesses, and then there was a verdict in May of 2018.

So it was in January of 2019 that that management certification letter that we talked about before that contained warranties about no allegations of fraud or suspected fraud was filed January 3, 2019, and then on January 9, the audit concluded.

So, again, we are going to explore this, as I said before, there may be legitimate, innocent

P. Degnan

explanations. Maybe it was a mistake. Maybe there are other factors, but we did think that since we found it relatively early in the investigation that it made sense to let people know that we were going to look into it and make the results transparent.

MR. CHEN: So we will take a brief recess break now. So we can see to various needs.

So it is now 12:56. We will convene at 1:15.

(Recess)

P. Degnan

AFTERNOON SESSION

1:17 p.m.

MR. CHEN: Good afternoon. Welcome back.

Before we proceed with our next witness, I wanted to ask Georgia Winston to give a brief explanation about a witness who was going to appear today and give us a report on what that was about.

MS. WINSTON: Thank you.

Professor Chen, we had planned to hear testimony today from a second is whistleblower. That witness has described to us steps taken by another company to manipulate employment numbers and other data in its submissions to the EDA in order to obtain tax credits.

Her story further highlights the risk of a failure to fully verify and track job data submitted by program beneficiaries.

Recognizing the importance of

P. Degnan

this issue to the Task Force, the witness had agreed to testify voluntarily.

Unfortunately, this morning, she changed her mind in part due to concerns that the company at issue, her former employer, might attend. And we want to reiterate here that the Task Force is investigating the issues with an open mind and with an eye towards affording each individual or entity due process, but we are also mindful that the hurdles that whistleblowers feel they must overcome to tell their stories.

As with Ms. Kama who testified earlier, the Task Force may issue subpoenas to help alleviate some of these issues when it believes that such testimony will add significant information to the public understanding of the Task Force's work.

And again, I want to emphasize the importance of this kind of

J. Goodman

information to that work, and I do hope to hear from this witness at a future date.

MR. CHEN: Thank you.

With that, I believe we will hear next from Josh Goodman. Welcome Mr. Goodman. And Pablo Quinones --

We should administer the oath.

Do you solemnly swear or affirm that the testimony you are going to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

EXAMINATION BY
MR. QUINONES:

Q. Thank you, Mr. Chen. Thank you, Mr. Goodman. I know you had a long trip from DC and I appreciate you being here.

Mr. Goodman is a senior officer of economic development in the state fiscal health for the Pew Charitable Trusts, a nonpartisan, not-for-profit public policy organization and has spent time studying state tax incentive programs.

J. Goodman

We are grateful for his participation today since he brings a wealth of expertise as primary resource and has also authored several papers on tax incentive policies across the country.

Today, Mr. Goodman will offer testimony about best practices for the design, implementation and oversight of tax incentive programs. He will also call for suggestions on how New Jersey would improve its program in those three areas.

And before I turn the floor over to Mr. Goodman, let me say that his testimony today will be in two forms.

First, Mr. Goodman has prepared a witness statement that provides eight specific ideas for New Jersey to consider including the design, implementation and oversight of its tax incentives.

Mr. Goodman will not be reading these remarks today. With Professor Chen's permission, they have been submitted with the record and are available at the front table for anybody that would like a copy.

J. Goodman

Second, Mr. Goodman will use a PowerPoint presentation to explain to us some of the best practices for the design, implementation and the oversight of tax incentives.

During that presentation, I will ask him questions, but in large part, he will be walking us through his presentation.

Before I begin on the substance, is it correct that you are testifying in these proceedings today, Mr. Goodman, voluntarily?

A. That's correct.

Q. Have you elected to have counsel present?

A. I have not.

Q. Are you aware the EDA may ask you -- may ask to cross-examine you at the conclusion of your testimony or at some other point in time?

A. I am.

Q. Thank you, Mr. Goodman.

Before you begin your

J. Goodman

presentation, would you simply describe the eight specific suggestions that you are prepared to cover?

A. Yes. So first, NJ policymakers should clarify the goals is the state's incentives.

Second, the state should consider further targeting incentives to businesses that will grow the state's economy, such as companies that sell their goods nationally and internationally.

Third, New Jersey should consider shortening the timeframes on which it offers incentives.

Fourth, the state could potentially fine-tune its approach to targeting the incentives to distressed areas.

Fifth, New Jersey can establish strong fiscal protection for incentives.

Sixth, the state can ensure that it's effectively verifying that businesses met their commitments to create jobs or make investments before issuing tax

J. Goodman

credits.

Seventh, New Jersey should establish regular, independent evaluations of tax incentive programs.

Eighth and finally, New Jersey could assess whether there are ways to enhance the data it produces about the future costs of the incentives.

Q. Thank you for that summary, Mr. Goodman.

Let's turn your presentation, Best Practices for Economic Development Incentives and Policy Considerations for New Jersey. Please begin.

A. Thanks very much and thank you very much for extending the invitation.

We have at Pew have been researching economic tax incentives for the last eight years, and the focus of our work is on helping states improve the effectiveness of their incentives and helping states make better decisions in forming incentives.

So we don't come into the work

J. Goodman

with any preconceived ideas about what specific types of incentives they should have and whether they should use incentives or not. What we want to do is help states build the capacity to analyze their incentivees more effectively for themselves.

So today I'm going to talk about three key aspects of incentive policy.

The first is how the programs are designed. What is actually in the statute that lays out sort of the structure of these programs.

In the second, how they are implemented. How can administering agencies run the programs sufficiently and effectively.

And then third is oversight, how should agencies beyond the administrating agency provide oversight on these programs. That includes evaluating their effectiveness and also includes monitoring their effects on the budget.

In each of these three sections,

J. Goodman

I am going to discuss lessons from research around the country, sort of guiding principles of a policy, and at the end of each section, I will talk about how those lessons can be applied to New Jersey specifically.

So first I'll start with design. I think the important thing to understand on incentive design this is really a growing body of evidence in terms of what works for incentive programs. That's partially because leading research economists around the country have taken an interest in those programs and are studying them in mover depth.

But it is also because states themselves are studying incentives. So as I'll mention more in the oversight section, there are 30 states that now regularly evaluate tax incentives. And part of what we are doing at Pew is reading these studies that analyze the effectiveness of the incentives and looking for common themes in those. So what I am describing

J. Goodman

here are some of the common themes from that research.

So in terms of designs, there are a number of different guiding principals. So the first three that you see on the screen all relate to the economic effectiveness of incentives.

I will talk about these in more depth, but the basic idea here is which businesses receive incentives. It matters how the benefits are structured. And also in the broader situation in the economy, economic conditions matter as well.

Fiscal protections are also important. In our research, one thing we have seen over and over again is the cost of specific incentive programs have increased quickly and unexpectedly. When this happens, states are often forced to make difficult choices between either raising taxes or cutting spending in other areas to make up the difference.

So those kind of problems are not inevitable and fiscal protections are a way

J. Goodman

to prevent that kind of situation.

Finally, I think it is important, when you think about design, to think about decisions that you are making that affect whether you can assess these programs down the road and that's why providing clarity on the goals of this and the data necessary to ensure those goals are achieved is important.

So when states design data collection, there is often provisions that discuss how data will be collected on those programs, serving a number of different functions including evaluating for a programmatic effect in the future.

Q. Excuse me, with respect to providing clarity, how can you New Jersey design its tax incentive programs to make the goals of the programs clearer and to ensure that legislature uses the data it needs to achieve its incentive goals?

A. I think there are a few different things to think about there. One thing and I'll discuss this in more depth later, is

J. Goodman

New Jersey really does have multi-faceted programs. So there are different policy ideas that are built into these programs.

And so you really need to sort of parse out different objectives, and so the primary programs focus on development and creating jobs. But there is also important considerations related to where those jobs are created, the types of development.

So just sort of going through that list and defining what those goals are is an initial step.

In terms of figuring out what data to report, I think that really needs to be an interactive process with the state agencies and with whoever is responsible for evaluating incentives. So states such as Washington State have done this, work with their evaluation office and ask them if you are going to evaluate this program in three years or five years, whatever it might be, what data do you need to do that evaluation in the future.

Q. Thank you.

J. Goodman

A. So one principal in terms of creating a higher economic impact of these programs is to target high impact firms. So that's what I mean when I say the companies that benefit. And there is a few different ideas that the research literature generally supports.

Generally, you want to provide incentives to businesses that sell their products to out-of-state customers, sell their products nationally or internationally, and -- as opposed to those that provide since to a local market.

If you think of a company that provides incentives -- excuse me, that sell to customers in the local market.

So if you think about a company that sells to a local market, such as a retailer, supermarket, a hotel, something like that, they are competing with other New Jersey businesses or other businesses in the local economy.

So if you provide incentives to say help a hotel expand, unless you have

J. Goodman

more people who want to stay in the particular area, there is a trade-off there because another hotel is going to have fewer visitors.

In addition, when states are justifying incentives, not just focused on what that company will do, but what are the broader effects, the indirect or induced effects in the local economy, so how is that company and its employees going to spend their money. So that's where some of these other principles play into it.

So high wage firms, the workers have more money to spend in the local economy, that has additional benefit. If the company is a local supplier networks or money is locally owned, that money will stay in the economy longer. So companies spends its money but spends it at other New Jersey businesses.

Another important principle is the maximizing the value of incentives. Here, timing really matters. to Just explain what I mean by maximizing value, if

J. Goodman

you think about the way most tax credits work, it costs the state one dollar to provide a dollar of benefit to the company. If you offer a tax credit that costs the state a dollar, taxes it doesn't have to pay, the company gets a dollar.

So in terms of maximizing value, think about what sort of changes that one-to-one ratio, either in a positive direction or potentially in a negative direction.

One thing the research literature suggests is that if you offer a business executive money that's promised far out into the future, they tend to place a heavy discount on that money. So there is one study that showed if you offer business executives a dollar ten years from now, they only value it at 32 cents today. In the slide, that's -- the blue line is that discount rate. Whereas you can see once you get to here, it is only 32 cents.

So whereas the research literature suggests that states should

J. Goodman

discount some money far less, and so if you think about the state government, it is still ten years from now has to provide funding for schools and roads and healthcare and everything that a state government does, so a dollar ten years from you now is still quite valuable to a state government.

So how this applies to incentive design is, all else being equal, there is a benefit to front-loading. If the program is stretching out 10 to 20 years, it may cost the state a lot of money and not provide a good bang for your buck.

Q. Mr. Goodman, besides offering incentives on shorter time frames, what other ways are there to time incentives to maximize the value of return to the state?

A. So here, there are ways to offer potentially benefits to businesses that really don't cost governments a lot of money, but that could be really valuable to the businesses.

So this is where states look at

J. Goodman

nonfinancial options. That could mean a work force development program that is tailored to a business' specific needs. so If that company doesn't have sort of a technical know-how to set up a program to train its workers, the state would come in to help and be very valuable to the company. But may not cost the same amount as an incentive.

Many times government agencies are in the business of providing information to companies. So if you think about a company trying to decide where to locate it has to -- it's really helpful to know what are some potential sites, who owns the sites, what are the zoning laws in those sites.

So to the extent economic development can offer that kind of information, it may be really cheap for them to provide and may be really useful to the companies.

As I mentioned also, economic conditions make a difference. The

J. Goodman

literature generally suggests that all else being equal, you want to target incentives to times and places where unemployment is high, and just to explain why that's the case, if you think about when unemployment is high, some share of those jobs are going to go to the unemployed work force. And so that is a lot of benefit to those people.

But also is benefits to the economy in terms of per capita income, as well as to the state budget because the state budget may be providing a variety of social services to the employee, potentially as they get jobs and raise their income, they may not require any of those social services.

Conversely, if you think about when unemployment is low, the literature suggests those of most jobs will be filled by in migration into the local economy. So people moving into the state. And many times, population growth isn't viewed as a negative generally, it is viewed as a positive.

J. Goodman

But from a state's budget perspective, it is more of a mixed blessing because if more people move to the state, you have to pay for their schools, roads, et cetera.

So now I'm going to turn to fiscal protections, and if you think about fiscal protections, there are two key goals that states are looking for.

One is predictability from year to year. State lawmakers have to budget on an annual basis. So if you have a sudden spike in how much an incentive program is costing you, that's a problem in terms of balancing the budget.

And then also there needs to be some kind of limit on a long-term basis. So that the state is making commitments that it will be able to afford in the future, and that it isn't crowding out other priorities.

In practice, there are really a range of options to short of achieve those two goals. One of the strongest

J. Goodman

protections is some kind of annual limit or cap on programmatic costs, and so caps can take different forms.

In some cases, there is a requirement that incentives, be funded by up-front appropriations, so the legislature is really saying up front, before businesses qualify, this is the amount of money we will put aside for the programs. In other cases, it is sort of a limit on what economic development agency can offer.

In addition to focusing on caps, there are a number of different considerations that I'll talk about in more depth. I think another principle here is when we have seen cost problems from incentives, when we have seen incentives costing --

MR. WALDEN: Can I ask a question, do you mind? Can you just unpack the caps a little bit more, why you think that's important? I just want to make sure that we understand that.

J. Goodman

THE WITNESS: What we see with incentive programs is that they often involve long-term commitments, and New Jersey certainly true in this case, where the programs stretch out 10 or 20 years in the case of ERG.

And a cap does a couple of things for you. One, it ensures that you're only authorizing a certain amount of money each year. So if the cap is set at 100 million dollars for each year, over ten years, you know you're not going to authorize more than a billion dollars in incentives.

So it creates an upper limit in terms of the what the state's commitment is. So a state lawmaker, as they are trying to balance a budget, not just this year, but in the future, is able to say we know this program is isn't going to grow dramatically beyond our expectations.

I think it is also helpful for, depending on how the cap is structured,

J. Goodman

in terms of year to year predictability. So if it is on authorizations and you are not exactly sure when the companies will actually use those monies, that money might not offer the you the same year-to-year predictability but it is helpful in that regard as well.

MR. WALDEN: Thank you.

A. So one of the places we reach interesting challenges is cases when incentives are aren't limited to what companies owe in tax liability.

That is the case with programs that are refundable and programs that are transferable, where a business can achieve more in benefits than what they owe in taxes.

And the reason states pursue those kinds of designs is there are certain types of businesses where just limiting the incentive tax liability isn't that valuable. You think about a start-up, if they are not turning a profit yet, they

J. Goodman

might not have much in tax liability.

So that's why states use refundability or transferability, because you lack that limit related to tax liability, those programs in some cases have really grown.

So I think my message there would be if you are going down that road, you really have to have these other kinds of protections in place.

Q. On that last point, what do you think are some things policymakers should consider when deciding on transferability of tax credits?

A. So I think there are a few different considerations on transferability.

One question for transferability is the level of benefit to the business they are trying to target. So the way a transferable tax credit works is the business receives a credit and they decide to sell it to another company. They don't sell it at its full face value. They sell

J. Goodman

it somewhat less than that.

And so in effect, the state is providing benefits to some other group of companies beyond those that were directly targeted by the program. So depending on how large the discounts are and which companies are buying the credits, I think there are reasonable questions to ask about is that an effective approach and does the state know which companies are buying them, are they companies the state wants to incentivize.

Related to that, we have also seen states focus on making sure they have good data on who owns the transferable tax credits, so making sure there is a good tracking system in place. So as these credits are sold and are redeemed on tax returns, the state knows who's buying them, what their status is and has data on those pieces of the picture.

MR. WALDEN: I have another question. Do I understand correctly that there is some states that allow

J. Goodman

transferability and some don't?

THE WITNESS: Yeah, it really can vary on a program-by-program basis. So in many cases, there will be some programs that allow transferability and others ones that don't within a state, and then there is some states that use them more often than not.

MR. WALDEN: Are there any studies that have been conducted to see in comparing those programs that allow transferability and those that don't, the ultimate economic impact of programs on improving the economy?

THE WITNESS: I haven't seen sort of generalized research on that. I've seen evaluations of specific programs that either are transferable or not. But not a generalized conclusion across --

MR. WALDEN: Thank you.

MR. CHEN: On that, are there programs of which you are aware of in which credits could be given to a

J. Goodman

nonprofit corporation which by definition do not pay corporate taxes so they can sell it?

THE WITNESS: I have, I do -- I think I have some programs like that where something like a utility or something like that or maybe a nonprofit building housing, the way it's valued to them and sell it, some combination of that --

MR. CHEN: Do you know whether -- is that a desirable situation in which tax credits should be transferable?

THE WITNESS: We don't have research on that specific question and I think really with transferability, and alternatives like refundability or cash grants and other alternatives, there are a number of mechanisms the state can use to say you don't have tax liability, we still want to provide you a benefit.

One question to assess would be, we could make them cash grants, we

J. Goodman

could make them refundable credits, we could make them transferable credits. What are the pros and cons of those different programs.

A. So another question related to fiscal protection is sort of the timing of incentives. This is important from a year to year predictability standpoint.

In thinking about the timing incentives, it is helpful to understand the basic process and the way many of these programs function.

First, there is an initial step where a state agency authorizes a company to participate in the program. And so they are saying there, you meet the basic criteria of this program, you can now participate in the program. But then the company still has to go out and meet, if it is a performance-based program, sort of commitments to create jobs, make investments, whatever those performance standards might be.

So then, after it is verified

J. Goodman

that the company hit those commitments, the state issues tax credits to the company.

And then finally, there is a third step where it could even be years later before the company actually uses or redeems those credits. So that's especially likely if it is a program with carry-forward provisions that permits the company to hold these credits and use them in future years.

And so where states have run into trouble in terms of predicting how much incentives will will cost year to year, it is often because these steps happen over the course of many years and on an unpredictable time frame.

So whatever states can do to both shorten the time frames and make them more predictable, it is helpful for controlling the timing and the cost.

One other fiscal protection is to linked incentives to the company performance and here, really sort of the worst case scenario with a particular

J. Goodman

incentive deal with a company or project is if it costs the state a lot of money and the state doesn't get to keep the jobs or investments, the economic activity that it was expecting. And so making incentives contingent on performance can help with that.

There is sort of a couple of different models for doing that. One is that states can provide incentives up front and then if the company doesn't perform, they can claw back those benefits.

Providing incentives up front, as I mentioned, is particularly valuable for businesses. I think the trade-off there sometimes there are understandable reasons why a business doesn't expand in the way expected. Either there could be an economic downturn. There could be the company itself could be struggling potentially within bankruptcy.

So that puts the state in a difficult position of trying to decide whether to reclaim that money and then

J. Goodman

actually going about doing so.

So then the alternative approach is to make the incentives contingent on company performance where the company is only issued the tax credits after it performs, meets its requirements, and then there is kind of a hybrid approach, and my assessment of some of New Jersey programs is that they followed the hybrid approach where the companies have to take a performance requirement before they receive incentives, but then there is a requirements related to maintaining those levels of jobs creation or investment and there are clawbacks if the companies don't maintain those commitments.

Q. As a general matter, how often do states actually engage in clawback proceedings against companies?

A. It is something we see with some regularity. Often there will be performance reporting on incentives that list the instances where it has been clawed back. So it is fairly common, but within

J. Goodman

any particular incentive program, it isn't often some large share of the projects that ultimately face a claw-back. But it is something that we see.

MR. WALDEN: All can I ask, were you here for the testimony of the comptroller?

THE WITNESS: Yes, I was.

MR. WALDEN: So one of the discussions we were having is about the whole notion of how often it is that EDA actually takes action; how many times they suspend or terminate, claw back. We will obviously try to get more data and shine some sunlight on to that.

But are there other states that have a separate, independent authority that's kind of responsible, taking compliance piece of it out of the agency? Because in some ways, it has been described to us that EDA, in some ways, is kind of like the business cheerleader, they are trying to bring

J. Goodman

business to the state. That's great. That's really important.

But are there any other states that have a separate enforcement arm that says once the closing is done, once the award has been made, we have got it from here to make sure that the taxpayers are getting the benefit of the bargain?

THE WITNESS: Yeah, I think we see a range of different models. So often with tax programs, tax incentive programs, the tax agency also has a role in verifying the data. They are the ones that are ultimately the tax returns are submitted to them and so it varies to what extent an economic development agency is engaged in compliance versus department of revenue or tax agency.

There are also sometimes processes for independent audits or other kinds of verification processes.

So I do think it is a range of

J. Goodman

models that are out there and it's not unusual to have any economic development agency doing that work, but also not unusual to have these other agencies as well.

BY MR. QUINONES:

Q. This is a follow-up on that, are there any studies on which models are more effective?

A. I have certainly seen in different states' different assessments of which model to use. I wouldn't necessarily be able to generalize in terms of a principle.

So I thought it would be helpful to sort of show, give an example how these different design principles fit together in a particular incentive program.

So Minnesota's job creation fund is one of their primary job creation incentives, somewhat analogous to Grow NJ for Minnesota. And many of these principles work in various ways. First targeted to high impact businesses. The

J. Goodman

industries that it targets are ones that generally sell their products to out-of-state customers and the state also exercises discretion on which businesses qualify. So that's potentially a way for them to be saying, this particular company has local suppliers that have a greater economic impact, something like that.

It is relatively front-loaded. In Minneapolis, St. Paul that metro area companies can only earn incentives for five years. Elsewhere in the state, they can earn incentives for seven years. And there are greater benefits, as that example shows, outside of the Minneapolis St. Paul area and relaxed qualification standards. so That relates to targeting their incentives based on economic conditions.

Finally, this program is funded by legislative appropriations. Money is actually put into a fund up front and then the economic development agency is limited based on the money available in terms of how much the incentives it offers and that

J. Goodman

provides a measure of protection for the state budget.

So applying these principles to New Jersey --

MR. WALDEN: I am sorry, I have one question for you. I don't know if you know the Minnesota set-up well enough to be able to answer this question, but is there a mechanism that they use -- and I can imagine things like an independent board, where you have economists and tax specialists -- but is there a process that they have implemented to try to make sure they remove political considerations and political clout from any decision making over who gets what tax incentives?

THE WITNESS: Actually some of my subsequent slides will speak to this. I don't know exactly on Minnesota, but what we have seen is having a range of perspectives to make those decisions.

One approach that states have

J. Goodman

used to serve exactly the purpose you are describing.

So for example, there is a program in North Carolina, where there is a mix of executive branch appointees and legislative appointees. There is also a mix of people with economic background and more of a budget perspective.

So what you are trying to do there is have different voices in the room to make those decisions, both because you think that might lead to better decisions, but also to make sure there is checks on any one person making those decisions.

MR. WALDEN: Thank you.

A. So I think there are a number of opportunities to improve the design of the incentives.

First, I mentioned ERG offers incentives for potentially up to 20 years. The literature would generally suggest that the state could potentially spend less on

J. Goodman

incentives, but have the same impact if it shortens some of those time frames.

New Jersey incentives are generally many of them focus on businesses that sell to out-of-the-state customers, but there are exceptions to that.

There are retailers and hotels that qualify under ERG. The urban enterprise zone also offers benefits to retailers. So there I would say there could be a specific policy rationale for offering the incentives to those kinds of businesses if you think about something like offering incentives to grocery stores locate in a food desert, that would be a possible rationale for doing something like this.

But there should be at least a clear rationale if you are going to in that direction.

Then, there are also opportunities potentially to fine-tune targeting to distressed areas. This is something that New Jersey does right now.

J. Goodman

Obviously, just with the example of Camden, there are a lot of incentives going to businesses in distressed cities.

The Rutgers University Bloustein School did a study of New Jersey's incentives last year and one thing they pointed out on the residential side of ERG was that there was a lot of variation where some distressed cities were getting a lot of projects with a lot of incentives. Other equally distressed cities were receiving less in incentives.

So I think that's where you could think about how are we targeting distressed areas, is there a better way to do that.

I think related to that, another way another key question is, are the people in those areas benefiting from the incentives. That would sort of be the underlying goal.

Then in terms of fiscal protections, New Jersey could establish more consistent fiscal protections for the state's incentives. There are certainly

J. Goodman

some fiscal protections such as company or project-specific limits in place now. But in the current generation of incentives, there is no aggregate cap that creates that overall net.

Finally, as I mentioned, there may be a goals that you have set up so you are able to evaluate them in the future.

My second section is on determined design implementation. So how do state agencies take what policymakers put in statute and then operate the programs.

In here, I think there are three key tasks for administering incentives. First is sort of a promotional task; publicizing the programs, explaining the programs to potential businesses that might qualify for them.

Then, once companies apply, state agencies have to determine whether they are eligible or not. And then especially with sort of performance-based model, they have to make sure that they are only awarding

J. Goodman

incentives to businesses that meet their commitments, meet their performance obligations.

In digging through what these administrative tasks look like, one of the key decisions states make is whether or to what extent incentives are discretionary and this does kind of get a little bit back to the design of the programs. But at one spectrum, we have some programs that essentially function as entitlements.

There are specific criteria in law. Every single business that meets those criteria gets the incentive, and with those kinds of programs, sometimes companies simply file their tax returns. They say we did this activity. Potentially that could be subject to an audit to verify that. But otherwise, that's sort of all they have to do to get the incentive.

At the other sort of extreme end of the spectrum, you have programs that are highly discretionary where state officials or some state body have broadly determined

J. Goodman

which benefits, which businesses get incentives. There, the administrative role is much larger because you have to be able to weigh these different businesses, figure out which ones are good or best for your economy.

So there are pros and cons in different directions. In thinking this through, one of the key questions is whether you are set up to make those good decisions if you are using discretionary programs.

And I would sort of place Grow NJ and ERG in the middle of spectrum where there is a lot of criteria that are involved, but also also an element where the state is making judgment calls in terms of whether companies meet those criteria and assessing proposals.

Q. Are there best practices in assessing how discretion should be used when they are making those judgment calls?

A. I think there are a number of different things you might look at. One

J. Goodman

thing is to think back to those principles of design and sort of apply those ideas to specific businesses.

So you want to target high impact businesses. You want to target businesses that will grow your economy. They often have some kind of due diligence process where they're checking -- these companies have received incentives before, in our state or other states, have they followed through on their commitments? What are -- do we think they are good for our state economy.

So that kind of due diligence as well as sort of assessments of potential impact is part of the process.

So this example is just another case of showing how states can have a broad perspective, broad range of voices in making decisions about discretionary incentives.

And to the Massachusetts Life Sciences Board, under live sciences tax credit, which is one of the state's major

J. Goodman

tax credit programs, the one thing they decided or emphasized was having a degree of technical expertise in making these decisions. So they have state official, leader of academic institutions making decisions, but they also have people with expertise.

So a researcher involved in a life sciences business, so if you really have a discretionary program, you need someone to assess whether the business plans make sence, whether they are likely to succeed or not.

Q. On that life sciences board in Massachusetts, what benefits do you see to having a board like that that provides a range of views in evaluating whether to grant the tax incentives?

A. So the first thing I would say is we haven't done the research that demonstrates if that approach works better. I think the logic behind it is twofold.

One is to bring different perspectives to bear because those

J. Goodman

perspectives are valuable in making decisions, and so that includes people with a budget perspective who might say, you know, these incentives are -- we are in a budget shortfall right now, we can't provide quite as much incentives, we need to be really selective about which companies we offer incentives right now because of what's going on with the budget.

And also the technical expertise I mentioned from some of the people who can say this company is creating this new product, but I have expertise to say that product is an already out there, someone else is doing it, and I don't think their plans are going to come to fruition.

I think the other advantage that they see and the reason they do this having more business person perspective, make sure that, you know, it isn't too much one person making the decision and so you do have sort of a safeguard there built into the program.

Q. These boards exist at what state

J. Goodman

of the process so that they are influencing the decision making?

A. They are, generally speaking, assessing applications and, generally, there is the staff of an economic development agency or whatever agency is making these decisions who has a -- it is the first stop where they are probably working with the company to make sure their proposal follows the guidelines of the program.

But then that proposal is brought before a board who has ultimate the weight to say, yes, we are offering incentives for this project to come.

Then a second step in implementation or another step in the implementation is making sure that businesses have followed through on program requirements, that they have met their commitments. And what I want to talk about here is why that work can get complicated.

So it might sound simple to count the number of jobs and how many created,

J. Goodman

but there are -- and jobs, there is just one example of the kind of things that businesses are required to do under these programs.

But even something sounds simple like jobs, there can be a lot of different considerations. Companies can have part-time workers. They generally always have some vacancies they are trying to fill. They have contractors, they have subsidiaries. They might have multiple locations within one state and are moving people from location to location or perhaps people are split between locations.

So what is important in order to allow administrative agencies to verify performance is to have clear definitions of what you mean by things like jobs so you know that companies are following through and businesses also have to understand these definitions.

MR. WALDEN: Can I just ask you to unpack one thing for me. I have to apologize because we have to be done

J. Goodman

with you by 2:15 in order to make the schedule.

There is one thing important that was said by the comptroller which is -- what I don't understand is tracking jobs does seem complicated because, OK, one person leaves, maybe another person is hired, that's what the comptroller said about people that are hired in the fourth quarter, although we can all imagine other reasons that might happen.

Are interest programs that simply say, listen, you have to keep your headcount at all times above "X." Your headcount is "X," we want you to be at "Y," there is no job moving around the state. You have got to keep these jobs in and you have to be at that level.

I think a simple program that way so you are not measuring jobs, you are just measuring headcount and it's easier to measure that or is that being naive?

J. Goodman

THE WITNESS: So I think -- it would sort of depend on the design of the program. So if that's what you are going for, that would be a potential option.

I think there would still be a number of questions related to how you are accounting for part-time workers, something like that, if there are subsidiaries, and you would also been need the data to make that assessment.

So generally, there is some kind of regular performance reporting to verify job creation and so -- this relates to the next thing I'm going to talk about, sort of what is the data source that allows you to have that number and to verify it would be the question. But it certainly would be one option as well.

A. So when states do seek that kind of performance data to verify companies, they can get it from a number of different sources.

J. Goodman

One approach is to use existing state administrative records. These are records not related to a specific program. This is something the state is already collecting for another business purpose.

So one of the key example here is unemployment insurance records, where businesses are regularly reporting their reports on the wages that they are paying to employees as part of the unemployment insurance system, and so this is something that states often use to try to verify job counts, and the advantage of using those kinds of records is that it is something that businesses are familiar with. It's already ideally reported consistently, it's something the state is already collecting.

The challenge there is that information is generally provided to the Department of Labor. So there has to be some kind of information sharing agreement to get it to whatever agency is administering the program.

So then what states have also

J. Goodman

done, if the state administrative records aren't sufficient, they required reporting specific to a incentive program. So put in specific reporting requirements.

So there, you really have to make sure that businesses are providing information in a consistent way. They understand the requirements, that the agency is getting the information that needs.

And then as I mentioned earlier, there can also be going directly to the source through audits, site visits, other provisions of that nature.

In this performance reporting, I think it is worth noting that monitoring company performance is one of the key goals but not the only value of performance reporting, and it's not the only thing to be thinking about when you are designing reporting requirements.

Generally, economic development agencies or the administering agency are also then making some of this information

J. Goodman

publicly available and that can offer sort of a check in on how these programs are working.

So a performance report might say these are the companies we have authorized incentives to. This is the number of jobs they promised to create, this is the number they have created so far, and that information helps inform both lawmakers and the public as well.

Q. What is the some of the best ways in which states are monitoring company performance; that is, if the state isn't getting the benefit of the tax break they gave the company?

A. So I think,there are an number of things you can mention. When -- I think having a verifiable data source that's established is really an important part of it, where you say you have to -- this is the data we are going to use to measure job creation in this particular program and this is what job creation means in this particular program, and that way, everyone

J. Goodman

understands when we say that this program created 5,000 jobs, they know that what means.

So one example of that was in the state of Virginia where they had nine different agencies that administered different incentive programs and those agencies got together and looked at their different statutes governing these programs and realized they had different definitions in law in Virginia of what a job even meant.

So they did a process to make a consistent definition that they would use for performance reporting purposes, so that they -- when the state of Virginia says that we create 100 jobs in this program, 100 jobs in that program, it means the exact same thing.

Q. Thank you.

A. So then in terms of questions for implementation of New Jersey incentives, here, there is certainly others who are in a better position to weigh in on specific

J. Goodman

details of how New Jersey is administering incentives, including the comptroller and EDA obviously.

Let me make a few general points. One question is the three tasks I laid out at the beginning, promoting the programs, weighing applications, and then verifying performance, how is the state doing on each of those things. And one place to look is obviously the comptroller study. I would also point you to the Rutgers study and one point they made in the Rutgers study is for ERG, companies are supposed to demonstrate a financing gap.

So there is some quantitative analysis of this is a development that needed these incentives in order to go forward. And what the Rutgers studies showed is for some projects it received were authorized for ERG benefits, the incentive appeared to make a big difference in terms of increasing the return on investment from that development. Other places, it made smaller difference.

J. Goodman

The Rutgers researchers couldn't see what standard was being applied, in terms of what the financing gap has to be in order for a program to go forward. That's one thing to look at.

I think in statute, having a performance-based model, as New Jersey does, is a strength of the program.

When I talk about performance-based incentives around the country, one example I use is Revel Casino in Atlantic City. You have a case where the state authorized incentives, but the casino went bankrupt and the state didn't have to pay out any of that money.

So with other programs, in other states, you wouldn't have had that situation and not only would that have been sort of an economic concern, it would also have been a budget concern.

With that being said, the performance-based model has to be working well and the state has to be able to verify the companies are being met.

J. Goodman

Q. You touched on jobs, so let's go to the next slide.

A. Sure. So finally, I'm going to talk about oversight of incentives and let me hit on two things specifically when it comes to oversight.

When I'm talking about oversight, first, there is a matter of measuring the economic impact of these programs. And so focusing on a programmatic level and saying are these programs achieving their goals, how well are they working. And then to compliment what I discussed earlier on fiscal protections, there is also the matter of protecting the future budget commitments, fiscal protection, making sure that incentives aren't costing more than intended, partially a matter of the design of the programs, but it is also a matter of the data, do we know on how much these programs will cost in the future.

MR. WALDEN: While you are pausing, can I jump in this a question.

MR. QUINONES: You gave the

J. Goodman

warning of 2:15.

MR. WALDEN: I know. One of the finding of the comptroller's report is the EDA is not measuring performance against actual performance data. They are not -- sorry, measuring whether it's achieving their goals against what's really happening in the real world.

Is that a common problem among states or is New Jersey unusual in that way?

THE WITNESS: So when we -- we read tax incentive evaluations from around the country. These are reports that some office does, digging into the details of an incentive program. And one thing you see all the time in those kind of reports is an assessment of whether the state is adequately verifying whether this incentive met their commitment.

So it is really a common challenge around the country, and so it

J. Goodman

gets back to the challenges that counting jobs and how is the state independently checking that, does it have good data. So it is a problem that a lot of states are dealing with. And states try to incremental implements to get better data, so they can have the assurances that the programs are doing what they thought they are doing.

MR. WALDEN: What do you think is class if you know? What state is best in class on this particular point?

THE WITNESS: I don't think our research necessarily points to best in class in that area.

So it really depends on sort of the goals of the program. But I would point to the state administrative records as being a valuable source of information, and so looking at this Department of Labor, that Department of Labor data as source of jobs data, that would be one place states could

J. Goodman

certainly look there.

A. So we have seen -- valuation --

BY MR. QUINONES:

Q. You can skip ahead on this.

Q. Sure. So states need to be coming up with a plan to regularly evaluate the effectiveness of their incentives and that requires them to make a number of decisions about who will conduct the evaluations, what programs we are looking at, what information the analysis will include, and so those are sort of the key decision points.

So in thinking through those decisions, I think what's important is to understand what a high quality evaluation looks like and usually an evaluation starts with some descriptive information that lays out the history of the incentive program, its goals, how it changes over time, those kind of things, and then it includes an assessment of the incentive's design and administration.

So many of the things I talked

J. Goodman

about in the first two sections of the program, you might see in an evaluation. It might say, we are not targeting the right kind of businesses for this program to maximize the economic impact. Or the agency that administers the program doesn't have the data it needs to verify job creation. Those are the kind of things you see in evaluations.

So then there is also quantitative analysis? How many jobs were created? What was the impact on the budget? How did this an affect the economy? And then the finally, that evaluation synthesizes that information into a set of policy recommendations.

So one of the key decision points is who should conduct this analysis, who is positioned to provide all the types of information I just mentioned. And here states have used a range of approaches.

In some cases, they are legislative staff, legislative audit offices, legislative program evaluation

J. Goodman

offices, legislative fiscal offices.

In other cases, states are working with outside entities such as academic institutions or private consultants, and then finally, in other cases, it might be an economic -- excuse me, an executive branch agency.

And we at Pew don't have one specific recommendation that applies to all things. Instead, you want a state that balances a number of considerations.

First, some state agencies aren't going to have authorization to make policy-relevant conclusions. So that's an important piece of that. And then you also want relevant expertise, both at the performance audit side of things that we heard about earlier today. So digging into the details of the program, but also quantitative side of measuring economic impact. And then finally, it is crucial to have a nonpartial perspective.

So what we see around the country is not always in the case in the states

J. Goodman

that there is one office that checks all these boxes, and so in those cases, it could be an office that builds capacity in one of these areas that it doesn't have now, such as measuring economic impact, and it could be creating an evaluation process that has a couple of different offices with different discrete roles in the evaluation process.

Then moving on to the data side, as I mentioned, it is important to have data to supplement fiscal protections and there a couple of kinds of data you are looking for. One is data on the long-term commitment; how much are we committed to the programs, what the state maximum exposure to these programs, and the other is specific estimates of how much they will cost on an annual basis that can be used for budget purposes.

New Jersey is already releasing some of this information. This chart is from a -- something the EDA submitted to the Office of Legislative Services from

J. Goodman

last year's budget process and it has been in previous budget processes where the Office of Legislative Services asks questions about the state's future commitment on incentives and EDA provides information here.

EDA has described these numbers as the maximum amount of state resources that is required per program, but also notes that the actual cost may be lower because some companies may not meet the performance requirements.

Q. You have read the comptroller's reports, audit of the EDA. And it makes reference to EDA having approved nearly 11 billion in tax credits for a thousand profits as of February 2018.

What's your view on whether effective oversight should include reviewing both current tax benefits, as well as future financial commitments in New Jersey?

A. So New Jersey, as was mentioned earlier, in 2013, did this revision of

J. Goodman

their incentives where they made Grow NJ the sort of programs that are open to companies currently going forward at that point.

But because of the long timeframe for the incentives, there are major commitments to earlier generations of programs. This is something we see all the time around a country when states do have programs that last, five, ten, twenty years, whatever it might be. From a budget standpoint it matters just as much -- money that was committed to the previous generation of programs that still can affect the state's budget as money that is from the current generation of programs.

So when you are thinking about cost protections, when you are thinking about having information that lawmakers can use, including that full picture is crucially important.

Q. I will follow quickly and then I think Mr. Walden wants to follow up as well. It's a true commitment, so with

J. Goodman

respect to the comptroller's report, the reference to 11 billion dollars is a true financial commitment of the state?

A. Yes, I think you have to maybe dig into that number to know whether are there instances there a company can actually still potentially earn that money because their benefits have expired or they don't have an opportunity to use it for some reason. But failing that is really something that is a liability on the state books that could cost the state money in the future.

MR. WALDEN: I was going to ask that very point, which is when you introduced this slide, you said that these may not be as high because there may be some companies that don't qualify or comply with their obligations. That assumes that they are checking and actually verifying applicant-supplied data, right?

THE WITNESS: Right. So that that would be their process to verify

J. Goodman

and offer incentives. So it wouldn't -- some companies don't think hit these commitments and EDA confirms that, then the incentives cost less than the numbers in the slide.

A. So in terms of opportunities to improve oversight, one key step is to establish a process for regularly evaluating incentives coming up with who should do it, what programs should be covered, what the review schedule should look like, all those kinds of things. In terms of taking them through the right office, I think there are a number of different options in New Jersey.

As I mentioned, the state auditor, the comptroller and Rutgers all did an evaluations of New Jersey incentives and offered different aspects, examined different aspects of the programs.

They are all potential contenders and there might be different pros and cons going in different directions, and then finally just sort of building off the

J. Goodman

previous slide, there may be opportunities to have additional detail on the projected cost of these programs.

So then finally to offer some concluding thoughts, New Jersey programs reflect some best practices but there are also many opportunities to improve, and I would broadly group those opportunities into three areas.

One is options to improve economic effectiveness of the programs. So that could be better targeting of businesses that sell to out-of-state customers and also using the shorter timeframes.

There are opportunities to make sure lawmakers are in control and know how much these programs cost to manage and with both better data and fiscal protections in the design of the programs, and then finally, one thing I think is clear and really illustrated is that incentive design is complicated. There are a lot of details to examine and that's where regular

J. Goodman

evaluations can help because they dig into the detail of the programs and say what's working, what's not and how the state can make improvements.

Thank you very much and I am happy to answer any additional questions.

Q. Very useful suggestions at the end. Is it fair to say that these are not the only way New Jersey can improve its design, implementation and oversight of its incentive programs?

A. Absolutely. As I mentioned, I do include eight specific ideas in my written statement and, additionally, there is a lot of more nuanced, fine-tuned recommendations that you can find in the New Jersey evaluations that I referenced.

MR. QUINONES: Thank you.

Professor Chen any additional questions?

MR. CHEN: Just one, try to, in a way, reconcile your first and your fourth recommendations, the first being clarify the goals of the state's

J. Goodman

incentives and the fourth being to target incentives to distressed areas, particularly with regard to New Jersey's programs, the programs, the Grow New Jersey program are two distinct goals. One is job growth and retention, and that is one that's usually mentioned as a primary goal.

The other is capital investment, particularly in a growth zone, which is the four most distressed cities in the state; Camden, Trenton, Patterson and -- Passaic? And I think think, due to another part of legislation, I think Atlantic City is included, at least in some of those programs.

So the way the program works is an application that came from Princeton or short Hills would not be eligible under the metrics established, but the one from Camden would. And there is nothing secret about this. It's because they changed the eligibility criteria if you -- in Grow New Jersey.

J. Goodman

So my question is, in program design, do you have a view on whether it is desirable to mix those two goals in one program where the metrics of accountability and eligibility either have to be changed in order to encompass the areas, the particular geographic areas that you want to encompass, or is it possible that could lead to fuzziness, confusion in program implementation.

Is that anything that you have any experience or --

THE WITNESS: So we see states do different things in their design. Sometimes states sort of pack a lot of ideas into a few flagship programs, which is what New Jersey's approach has been. They have lots of sort of discrete programs.

I certainly don't have a -- from our research, a clear recommendation between those two things. I think if you are going to use an approach of

Page 238

J. Goodman

having a lot of different ideas in one program, it's important to, A, be clear about what the different purposes are, and, B, make sure they are not working at cross purposes from one another.

So making sure that if your goal is create jobs throughout the state, is it acceptable if a company moves jobs from area that isn't in distress to an area that is distressed? That is a reasonable policy question, but you need to make a decision about whether that's an acceptable outcome or that's not, because it serves one of the goals but not really the other one.

MR. CHEN: Or if it doesn't create many new jobs or retain jobs at all, but it does create a lot of capital investment. It would be OK to still contain that within a program that is geared primarily towards job growth?

THE WITNESS: So we do see job creation and capital investment used

Page 239

J. Goodman

together in incentive programs often. I think it is reasonable to sort of dig into why you care about a capital investment versus just job creation.

I think it is usually pretty intuitive why states want to create jobs. Sometimes that's because something related to the degree of long-term commitment of the company, if they make a capital investment, they are more likely to stay long term.

It could also be that there are sort of property tax implications related to local governments related to a capital investment.

So if that's the direction you're going with, you need to be clear about why you care about capital investment.

MR. CHEN: Thank you.

MR. QUINONES: Thank you.

MR. CHEN: Thank you very much, Mr. Chen.

MR. CHEN: Especially for traveling to New Jersey.

Page 240

J. Whiten

Jon Whiten.

Do you swear or affirm that the testimony you are going to give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

MR. CHEN: Thank you very much.

EXAMINATION BY
MS. PATEL:

Q. Good afternoon, Mr. Whiten.

A. Good afternoon.

Q. So, first, I want to thank you for joining us here today and taking the time to learn from your years of experience in policy research, specifically in New Jersey's tax incentive programs.

So as Professor Chen and Mr. Walden explained earlier today, a part of our mandate is conducting an in-depth examination of the Economic Opportunity Act of 2013. And as we've heard from various witnesses today, at its core of this mandate is this piece of legislation that a lot of the application, implementation and

Page 241

J. Whiten

the impact on the taxpayers and the companies stems from.

So in addition to gathering the information at the company level and also the EDA oversight, we are trying to conduct that in-depth examination of how the EOA changed the state of play in legislation for tax benefits in New Jersey, and where do we go from here.

So before we begin on the substance, Mr. Whiten, I just want to ask you a couple beginning questions.

Are you testifying voluntarily here today?

A. Yes.

Q. Are you aware that the EDA may ask to cross-examine you at the conclusion of your testimony?

A. Yes.

Q. Mr. Whiten, are you currently employed?

A. Yes, I am.

Q. Where are you currently employed?

A. At the Center on Budget and

J. Whiten

Policy Priorities.

Q. When did your interest in the study of the New Jersey tax incentive programs begin?

A. Started paying close attention to New Jersey's tax incentive programs in 2009 when I was working as a journalist in Jersey City. And at that time, there were a lot of tax incentives going into Jersey City, and it was something of a political and economic interest.

Q. And after this initial interest, did there come a time when you were employed at New Jersey Policy Perspective?

A. Yes, I began working at New Jersey Policy Perspective in the fall of 2011.

Q. And during your time at New Jersey Policy Perspective, did you conduct policy research on specifically New Jersey's tax incentive programs?

A. I did. I really began digging into that in 2012 at NJPP.

Q. Can you describe some of that

J. Whiten

policy research?

A. Sure. Really, the main goal was to take the information that the EDA made publicly available and translate it a little bit and continue to shine a light and tracking it in different ways, subject it over time to identify policy trends and things that had happened as a result of changes in legislation.

Q. You had mentioned that one of the sources of your data was the EDA data and what was publicly available. Can you continue to describe a little bit of what your main research methods were to analyze that data?

A. Sure. It's basic quantitative analysis of the existing EDA data, basically taking it into new spreadsheets and running different formulas on it, as well as some qualitative analysis, reading through, you know, EDA agendas and getting a sense of what was going on with incentives being approved.

Q. So now, specifically looking at

J. Whiten

where the legislation is today and understanding more of the evolution historically, when you began your time at New Jersey Policy Perspective, you were at a very similar cross roads. It was pre EOA13 which is what I'm going to use to refer to the Economic Opportunity Act, and it was at a point where legislation was about to be overhauled and kind of redesigned.

Can you take us back to around that time to describe what the state of play was in 2012?

A. Sure. In 2012, we were beginning to see what I would say is sort of an initial search in subsidies and tax incentives that were being offered by the state of New Jersey.

New Jersey has had tax incentive programs dating back to 1996, but we didn't really see an explosion in these programs until during the Great Recession. So in 2012 or so, we were beginning to see a lot of really high-profile, over 100 million

J. Whiten

dollar deals for single companies, that kind of stuff going on, and the volume, overall volume of incentives was also increasing.

Q. So if we're focusing just on the legislation that existed pre EOA13, did you -- what is your perspective in terms of whether that legislation was effective to achieve its aims, so economic development and benefit to taxpayers, balanced out with the amount of awards that were doled out?

A. Hindsight is interesting, when you compare it to what happened after EOA13, but at the time I was certainly of the opinion that it was tilting very heavily towards corporations that were applying for tax incentives and more and more away from taxpayer interests.

We saw this related to two metrics, both the overall volume that was being approved and the cost, the taxpayer cost per job. Both of those have increased over time.

Q. Did there come a time during the

J. Whiten

policy review that you became familiar with the legislative design of the EOA13?
A. Yes.
Q. Can you briefly describe for the members of the public EOA13 and an overview of the legislation?
A. Sure. EOA13 did a whole lot of different things, but one of its core functions was streamlining New Jersey's tax incentive programs and leaving us today with two active programs, the Grow New Jersey program and for, you know, job creation, retention, and ERG program for redevelopment.
The EOA13 also brought a new sophistication to the way that New Jersey was designing policy run incentives with a lot of additional targeting and bonuses that you could get if you were in a specific industry, specific location and things of that nature. But I think that the targeting and things like that were by and large positive.
At the same time, the EOA13

J. Whiten

largely took out any fiscal constraint, particularly in Grow New Jersey, which has no cap of any kind. It has individual, you know, project award caps, but no overall cap. And so I think that that is what has led us to where we are today.
Q. So we have heard some of the witnesses testify before to a spending cap. So is what you are describing that the EOA13, when implemented, removed the spending cap in terms of the overall amount of awards that would be issued per year?
A. Correct. Except for Grow New Jersey, that was still a cap on one piece of ERG, which has been -- I will just add one thing on the spending caps, that that spending cap on ERG has actually been increased twice when the EOA ran up against the cap. What usually happens, you do follow-up legislation that no one's really paying attention to.
Q. So just to be clear, so after 2013, there has been incremental increases in the cap for that one specific part of

J. Whiten

ERG, and that has been through legislative amendment?
A. Yes.
MR. WALDEN: When were those amendments?
THE WITNESS: Off the top of my head, I do not know. I would have to go back and check.
MR. WALDEN: Would you mind following up with us?
THE WITNESS: I can do that.
Q. So you mentioned the tiered approach and the bonus. We're going to get to that a little bit later.
Before we get there, I want to just kind of focus on what the numbers are in terms of the awards that have been doled out historically.
So through your time at New Jersey Policy Perspective, you have written a series of reports that are very specifically focused on what you called the surge. So beginning with your April 2013 report, you discussed a sharp uptick in

J. Whiten

corporate subsidies and tax incentive reports, and when you refer to this, you are specifically referring to the fact that they exist even before the EOA13.
So before we get to the EOA13, where that surge went, can you just describe to us the evolution of that surge and where it was ending in 2012?
A. Sure. So -- and to do that, I will have to put us in two time frames, because, again, tax incentives in New Jersey go back to 1996.
So if you look at the decade of the 2000s, instead of the total amount that was awarded, you break it down, volume approved by month, that was 10 million dollars a month, was the clip of incentive awards in New Jersey during the 2000s. And the cost per job was about 17,000 dollars.
Q. So when you say the 2000s, you mean 2000 to 2009?
A. Correct.
So in the 2010s but pre EOA, that increased to 55.7 million dollars per

J. Whiten

month, and the cost per job also skyrocketed to 43,000 dollars per job.

Q. Before we get to the post-EOA, just so I can be clear on these numbers, so for the ten years before we get to 2010, the average per job amount was 17,000, and then within the first three years of the 2010s, so 2010 through 2013, it went up to 43,000?

A. Correct.

Q. That's even before the EOA was implemented?

A. Correct.

Q. And did the surge continue after the EOA was implemented in 2013?

A. Yes, it -- if you think of it as sort of a graph, it went up in a hockey stick type fashion.

Q. Do you have the data and statistics for what that surge was after the EOA?

A. Sure. After the EOA, through the end of 2018, we were up to 96.4 million per month, and the cost per job was about

J. Whiten

78,000 dollars.

Q. That's across the entire state?

A. Yes.

Q. So one of the things that we are trying to learn more about is how the EOA has separated out the bonus and the tiered approach for different parts of the state. So if that number is across the state, do you have any information about -- we have learned a little bit about the South Jersey district, or Camden specifically. Were the numbers, if you know, different for Camden?

A. The numbers were much higher for Camden. You don't actually measure the volume per month when you are looking at a specific job because, really, you're not going to have it on board every month, but certainly on cost per job, it was a huge differential.

The cost per job of the Camden awards, of which there were 1.6 billion dollars after the EOA, was about 274,000 dollars per job.

MR. CHEN: Is this specifically

J. Whiten

for Camden or any growth center?

A. This is Camden city.

Q. So just to be clear, so the average statewide is 78,000; for Camden the post-EOA period was 274,000 per job?

A. Correct.

Q. Now, just taking the entire state surge generally, what do you think contributed most to the continued increase of the awards that were doled out?

MR. WALDEN: Can I clarify for one second, I apologize. Help me understand this. The state is paying 274,000 dollars a year per job?

THE WITNESS: Not per year. Total over the ten-year lifetime.

MR. WALDEN: Got it. Thank you. Sorry.

Q. So what in your opinion, with respect to this, contributed the most to this continued increase?

A. Well, you know, the sort of direct factor is that the legislation underlying these programs has changed and

J. Whiten

rapidly expanded and sort of shifted priorities in a way that has allowed sort of an unfettered awarding of tax incentives.

Q. When you say "shifting priorities," can you expand a little bit on that?

A. Well, shifting priorities, you know, from my point of view and from NJPP's point of view while I was there, the key thing they're paying attention to was the fiscal part of this and the long-term budget impact.

So if you even just narrowed in on the fiscal priority, I think over time the idea became that fiscal control is not something that was essential to these programs significantly, in the broadest, you know, way of thinking about it.

There is locale. Obviously, that's not a big concern of legislators. There were other shifting priorities. I think there were geographic shifting of priorities. And again, like I said with

J. Whiten

EOA2013, there was an attempt to make some industry-specific priorities as well.

Q. So what you just mentioned, would it be fair to say that some of the most significant changes in terms of the legislative design for the EOA would be the removal of the spending cap, at least for all of Grow NJ, the expanse of geographic expansion and shifts, and also that the policy shift towards the system of tiered bonuses?

A. Yeah, those were the biggest. I would add that, in the positive direction, EOA13 began to treat, quote/unquote, at-risk jobs, jobs that have been retained, differently than jobs that were reduced in the state. So that was a positive development.

There was some loopholes and ways to get around that in the original legislation, but still it was a step in the right direction. And the other major change, I think, with EOA 2013 was a little bit of a change to the benefits test which

J. Whiten

I know came up earlier.

Q. I'm going to ask you a little bit more -- to expand a little bit more on the loopholes, the bonuses and net benefit test just a little bit later.

But taking the overall legislative design of the EOA13, in your perspective, do you believe that as a legislative design, it was successful to create the reform that was necessary after 2012?

A. No, I -- at its core, I think EOA 2013 was a real missed opportunity for reform. I know a lot of people put in a lot of hard work designing that legislation over a long period of time.

There were a lot of elements that were moving in a more sophisticated direction in terms of policy design, but I think when you look at those elements and combine them with sort of the fiscal explosion side of the legislation, you end up with a situation where you are kind of taking one or two steps forward and five or

J. Whiten

seven steps back.

Q. Do you believe that the volume of awards that have been approved and issued out of -- under the EOA13 is problematic?

A. Yes.

Q. So I want to go back to this idea --

MR. WALDEN: Could I ask, can you just unpack that a little bit for us? Why is it problematic?

THE WITNESS: Well, the chief concern is that there is a long-term budget pressure that is an explosion upwards will create, as we saw during Josh's presentation. That's just -- even a five-year estimate is in the couple of billions of dollars. But it really will go for another decade since these are decade-long awards.

I think that the real question is, are incentive programs doing what you need them to do, whatever your policy goals are? And do you need to spend that much money on the incentive

J. Whiten

programs to get the results you want?

I think over time what we have seen in New Jersey and in other states is that these programs have just become more competitive, you know, within states and cities, this arms race that everyone is engaged in, but I think you're coming at it from the point of view, which I am sort of, fiscal watchdog and also someone who cares about other public investments that the state needs to make every single year, it's highly problematic to engage in this kind of race to the bottom.

MR. WALDEN: Let me just ask one more follow-up question. Let's look at it on an macroeconomic level, right?

Based on the data that you just gave us, fair to say that between the 2009s and presently, the amount of money that we are spending on tax incentives every year has gone up tenfold?

THE WITNESS: Yeah.

J. Whiten
Approximately.
MR. WALDEN: Roughly, right?
So what is a fair expectation in terms of the improvements to the economy based on that, you know, significant increase in tax incentives?
THE WITNESS: I think you are getting to a large and thorny and thick existential question about tax incentives across the country and in New Jersey, which the argument of someone who might not agree with my perspective on that would say, well, it would be ten times worse if we didn't do that. Right?
So it's not necessarily even about growing the economy in that kind of purview. It's about keeping up with what other states are doing and not losing ground.
Whether or not that's actually how the economy works and actually how corporations make decisions about site locations I think is a very different

J. Whiten
story.
Q. So my next question, Mr. Walden set it up pretty well, is that, looking at it from that abstract in terms of benefit to the economy for New Jersey and being a little bit more specific, in the course of your policy research, what is your perspective in terms of actual benefit to the state of New Jersey after the EOA was implemented in terms of job creation, capital investments to different areas of New Jersey? Do you believe that there has been significant benefit, or is that something that's been compromised?
A. I think there has been a benefit. There is no doubt that there has been an benefit from these programs. I think any good researcher or economist or anybody who is thinking about any kind of budgeting, you have to think about what the costs are on that type of budget.
And I think there have been benefits. I don't believe that they are worth the amount of money that New Jersey

J. Whiten
is putting into this, this sort of strategy. I think if you were to force lawmakers to actually spend this amount of money, rather than do it through future tax credits, they would come to similar conclusions.
Q. So to sum it up, in your perspective, the cost is not worth the benefit in terms of the implementation and application of the EOA?
A. Correct.
Q. So moving a little bit more specifically in terms of provisions that were implemented through the EOA, we have spoken briefly about loopholes or the special terms which are considered bonuses.
Can you just unpack that a little bit and take that both in turn -- in terms of potentially providing some examples and the different ways that they apply around the state?
A. Sure. I think the main thing was, again, there was targeting around geographies, and usually this was done with

J. Whiten
either lower requirements to actually get an incentive or more lucrative potential incentives for the company for the project. Sometimes it was both in these different cases. But there was targeting of transit hubs and distressed municipalities and things of that nature. That was one layer of the targeting and the least lucrative, I guess, if you will.
Then there was targeting across a broader range of South Jersey counties, so that's Atlantic, Burlington, Camden, Cape May, Cumberland, Glouster, Ocean and Salem. That is another layer on top there.
Then there was, with regard to the state growth zones which were just mentioned, Passaic, Trenton, Patterson and Camden, plus later the addition of Atlantic City through subsequent legislation. And then there was Camden City which is sort of in a world of its own under EOA13 and, you know, the way I would describe it to my mother or someone, they just have an extra special bonus category.

J. Whiten

Q. So some of your New Jersey Policy Perspective reports unpack this a little further, and you have discussed that the EOA13 treats these targeted industries and locations as bonuses rather than a baseline for a grant. Can you expand on that a little bit because I think it is important to understand how these are actually applied to South Jersey projects.

A. So I think it dovetails with something good that Josh mentioned in his testimony, which is tying in to what your goals are, and if the goals are really that you want to incentivize projects that are in this particular area or in this targeted industry, let's make that the baseline. And then if companies are doing less, either they are not eligible for the tax break or they get a tax break that's much smaller.

But instead, the basic policy design of EOA2013 was, you meet the bare minimum, you get the base, and then you get, on top of that, all of these different

J. Whiten

components. I just think that that would only happen in a policy design that also doesn't have an overall spending cap because then you can just build these bonuses on top and not really have to worry about the cap.

Q. So would it be fair to say some of the projects that were based in South Jersey were essentially benefiting twice under the provisions of EOA13?

A. I'm not sure what you mean by the question. Can you --

Q. In terms of they would have a lower threshold to meet the obligations to apply for a project, but they would also be -- have these bonuses that they potentially could apply for or have -- you know, be willing to add to the project application?

A. Sure. Yeah. In that way -- a project at any targeted kind of zone would benefit both from having a lower barrier to entry and a higher tax cost per job.

Q. So one of the things that we want

J. Whiten

to understand a little bit more is the distinction between an at-risk job and a new job.

Can you explain that a little bit further?

A. Sure. At-risk jobs were jobs that got certified by the CEO, as we heard a little bit about earlier today, as at risk of leaving the state, and those have been, I think, an increasing part of New Jersey's overall approach to tax incentives over the years.

If you look back and kind of break down the data, as I did before with the 2000s and the 2010s pre EOA, in the 2000s only 16 percent of jobs that were being subsidized with tax incentives were at risk or retaining jobs. In the 2010s, that increased to 46 percent, and so that was identified as a problem.

There were a lot of high-profile things happening pre EOA, that the public got a little outraged about and companies moving from Secaucus to Newark or from

J. Whiten

Newark to another part of Newark. To the average taxpayer, that didn't make sense. So in the EOA they changed the formula, the financial formula, for an at-risk job versus a job that was new to the city.

But what we actually saw was that the share of subsidized jobs hasn't really changed. It has been at 48 percent of the subsidized jobs post EOA are still just being shared within the state.

Q. From your perspective, if I can just take it one step further, why is it problematic that there has been a shift to a greater percentage of these awards being for at-risk jobs?

A. Well, because a lot of times the goals, again, are -- piggybacking again on what Josh was pointing out, the goals are sort of at odds with each other.

It is our goal as a state to grow the economy overall and create new jobs and target growth industries and things like that, or it's our goal to give a company a new headquarters down the road from where

J. Whiten

its old headquarters was just because it is in a different municipality.

MR. WALDEN: Sir, I understand that, again, from the benefit to the state as opposed to the benefit to the region.

But is it also fair to say that the retained jobs is easier for people to cheat on? Right? That is, when you're bringing jobs into the state or you're creating new jobs, I mean, that seems to me that that would be a more tangible thing that just saying, hey, I may be leaving the state.

When you guys were at NJPP, did you find any data to suggest that those sorts of programs are more susceptible to fraud?

THE WITNESS: I have no data on that. But I think from a sort of conceptual level, you've seen more and more use of this kind of, like, we are going to threaten to leave and get a tax break to stay, but -- in New Jersey

J. Whiten

and elsewhere, and I think that there is a whole process of that.

Consultants, they get hired by corporations who are already pretty sophisticated at dodging taxes at multiple levels, and they can help sort of navigate the different states' systems to be able to say, with a wink and a nod, and maybe it crosses some of the legal Ts and dots the legal Is, that, yeah, we checked out a facility in Pennsylvania and we might take our jobs there, we will sign a certification.

I think there is always a legitimate question of whether or not that threat to leave is real. I understand from a policymaking -- less from a policymaking, but from a political perspective, why calling that question out is fraught with concern because you don't want to be the legislator who says, well, this company threatened to leave and they actually

J. Whiten

left.

So it's a situation that, like so much of the rest of the policy environment around tax incentives over the last 20 years, has shifted the power dynamic from state and local governments to corporations who are really holding all the cards in a negotiation.

Q. So this kind of goes into the next area which is, where do we go from here, right? So where we started at 2012 before the EOA13 was enacted and implemented, and we are kind of at a similar crossroads.

So kind of taking what you have testified to here and our understanding of the impact of this legislation, I want to just kind of expand a little bit on some of the areas that you believe are fraught for improvement.

Before we get to opening the floor to the ideas that you have, where do we go from here in terms of improvements, I

J. Whiten

wanted to talk specifically again about the South Jersey provisions.

So in terms of what future legislation or legislative design should be, should include or how it can be restructured to benefit taxpayers and really improve the economy, how in your perspective would you approach areas like Camden and the growth zones that have been identified in the ERG?

A. I think that whether it is a growth zone in South Jersey or North Jersey, Central Jersey, my approach as a policymaker would be the same, which is actually align it. Align the programs with our overall state policy goals and our state economic development goals. Make sure that those goals aren't working at odds with each other, and then to really bring the overall costs of all of these programs down significantly.

Q. How would you suggest reducing the overall costs of the programs?

A. Spending caps overall is the most

J. Whiten

obvious solution. I think it can be a spending cap that's on a program over the course of whatever that program's life span might be, so, you know, Grow under EOA 2013 started at 2013 and expired in 2019. It could have had a cap of a billion and a half dollars, could have had a cap of 2 billion dollars over the whole lifespan.

The EDA had lawmakers have to figure out how to allocate it from there.

I think the other thing that I would like to see is more tying in of the tax credit process, and any kind of spending cap to the actual appropriation process.

I think as it stands now, if you're a legislator, you can vote on these programs. You can reap the benefit of the program by attending a ribbon cutting and things of that nature, and it looks like you are doing your part to grow the economy. It is a tough thing to do.

But you don't have to actually appropriate funds for it, and we have seen

J. Whiten

it in New Jersey history when lawmakers have to appropriate funds for this and choose not to.

The BEIP program was the only program that was based on appropriations, and a few years ago lawmakers actually stopped appropriating money for it because, against all of the other priorities, they weren't able to come to a consensus that it was justified. And unfortunately, they went to the wrong direction and turned it into a tax credit option program over the long run.

But I think overall, if the state is serious about curbing costs and controlling costs and being smarter about this overall, bringing more of the tax credit and tax incentive process back into the budget-making process would make a lot of sense.

Q. And continuing on with the areas that you believe are ripe for reform, your most recent paper from New Jersey Policy Perspectives speaks a little bit to the

J. Whiten

possibilities and the opportunities for reforming the net benefit test analysis.

Can you expand on that first to provide us with just some information about the current state of the plan for net benefit test?

A. Sure, so the net benefit test, I think that was defined earlier, but I will do it again just to be clear. It is the formula that the EOA uses to estimate the economic benefits of any proposed tax incentive.

So it uses a whole lot of different factors. It's a complicated economic formula, you know, number of jobs, promised wages, where the location is and that kind of thing. And the tax break itself, the tax incentive is contentioned on the project meeting the requirements that are laid out in legislation of the net benefits test.

Before the EOA 2013, most incentive projects had to deliver a net benefit of at least 110 percent, so 10

J. Whiten

percent more than the dollar value of the subsidy. And that 110 percent benefit was measured over the same amount of time that the company was required to stay in the state or to face possible clawbacks or revocation of tax credit. This was usually 15 years.

So one of the things that EOA 2013 changed was that it drastically changed this specifically in Camden, so now -- not now, currently, because I'll get to that in a second. It has actually been addressed, but there is a bit of a hole there, and I'm trying to lay the groundwork.

Projects were required to only provide 100 percent net benefits. So right off the bat, you are skating on thin ice there. I have no reason -- I'm also not a Ph.D. economist, but I have no reason to question the validity of the net benefits test and its accuracy. But you are measuring the benefits over a decade, you might be a couple thousand dollars off, a

J. Whiten

couple million dollars off, if you are talking about a 260 million dollars tax break. So 100 percent gives you no cushion, first of all.

But worse than that, in Camden City, the net benefit of 100 percent was measured over 35 years. The tax break itself was ten years with an additional sort of five-year possible clawback in times. So that's 15 years versus 35 years. So then you are actually creating a situation where New Jersey was at risk of losing hundreds of millions of dollars collectively on the deals that happened in Camden because of the way the net benefits test was designed.

Whether or not that's going to happen is an open question, but from a policy design point of view, you don't want to set yourself up for that to potentially happen. It's not responsible.

This has been changed moving forward. The EDA did it through regulation. But it wasn't sort of

J. Whiten

backdated, so the ones that had gone through in Camden with this 35 versus 15 mismatch still are putting New Jersey taxpayers at risk over the long run.

I would also suggest that, in addition to addressing with regulation, the EDA, it should be addressed, you know, through legislation, just give it more teeth. You want to have at least 110 percent net benefit, and you want to make sure it matches the amount of time that the company is required to stay in the state and to have strong clawback provisions as part of that if they don't.

MR. WALDEN: I'm not commenting on the clawback, but let me just ask you, in terms of the change to EDA by regulation, just help us understand, what was changed and when did that happen?

THE WITNESS: They changed it to essentially be that now they work -- so the amount of time that the net benefit test measured and the amount of time

J. Whiten

that the company was going to be required to stay, they were equal moving forward.

The company had to sign an affidavit saying that they planned to stay over 30 years, and that is -- that is a bit of a problem with the EDA regs, in my opinion.

Rather -- so here, I'll explain it a different way. Rather than simply returning to the old way it was done and saying let's make it 15 years for both and 110 percent, they kind of said, well, the company can say they are going to stay for 30 years and we will let them have the benefit of the 30-year net benefit analysis. Which is fine. They signed their thing saying they are going to stay.

But if they don't, you know, we can claw -- we institute some sort of clawback proceedings but, A, will we as a state? B, will we win? I think there is all those kind of questions

J. Whiten

that surround clawbacks overall.

MR. WALDEN: Well, if you are in a distressed area and it's a long period of time, what is the business failure rate? What happens if a company goes into bankruptcy? You can't recover money at that point?

THE WITNESS: Well, sure. I mean, that's another problem with clawbacks. Clawbacks are great. Every state should have clawbacks, but they are not -- clawbacks can't be seen as a substitute for smart policy design, particularly when you're talking about fiscal risk.

Q. So just to be clear, in terms of -- there's two things, I think, I just want to be clear about.

So the first is, in your perspective, there are ways that the future legislation can be a little more perfect in terms of oversight and kind of proactively looking at what the requirements are in terms of the actual benefit. And would it

J. Whiten

be in your perspective that there should be a shorter amount of time that companies are obligated to prove up this benefit to the state?

A. If it corresponds with the amount of time that the tax credit or -- I think the shorter amount of time overall for a tax credit, the shorter you want to measure the economic benefit.

Q. Also, to the second point in terms of the clawbacks and what you just testify to, obviously clawbacks are something that you do interactively, you know, when money has been approved and issued out, and then you have this effort to claw it back.

So in your perspective, is part of the role in terms of the gatekeeper for the legislative design to be that that money should be held a little bit closer and not doled out to begin with to then have to claw it back?

A. Yeah, I think for all of the reasons I just laid out, clawing back tax

J. Whiten

credits that have already gone out is not necessarily the easiest thing for a state to do. So why wouldn't you, at the front end, make it less likely that you are going to get to a clawback situation and by just being a little more conservative in your use of tax credits.

Q. My final question is more of a catch-all. In addition to the areas that you've already spoken about and identified as possible areas of reform in future legislation, are there any that we've mentioned that you would want to speak on a little bit further?

A. Oversight and evaluation is a big one. And Pew has got way deeper expertise in that than NJPP or I personally do, but there have been numerous attempts in New Jersey at different types of oversight and evaluation, including a 2007 law that was, you know, supposed to create an annual report across all incentive programs to say how much was out the door, how much was projected over the next ten years or so,

J. Whiten

what the salaries of those jobs were and all of these different factors that may not have been the perfect sort of oversight and evaluation report, but we don't actually know because we never have gotten one.

So something like that that's done by an independent agency or even that's done in a comprehensive which by EDA itself would be incredibly helpful.

Q. Can you expand on that in terms of the role that EDA plays or for a third party to come in and not audit but essentially regulate, how would that avenue from your perspective in terms of best practices work in practice?

A. It could work in a variety of ways. This particular legislation I'm referring to, it would have been handled by the Treasury, because of the intersection of tax policy and, you know, it's obviously in close coordination with the Department of Labor and with the EDA itself.

You could do it a number of ways. I think the key -- the key conceptual point

J. Whiten

of that legislation was to have an annual report that puts a lot of information out, both into the public, but for legislators as they're in the depths of budgeting. And these kind of issues are actually on their mind.

So if you tie that kind of report and oversight to, say, some sort of annual appropriations function, that's where you're actually getting at what lawmakers need to be more responsible about their decisions.

MR. WALDEN: Were you present at the legislative hearing?

THE WITNESS: Which?

MR. WALDEN: That was on tax incentives.

THE WITNESS: Oh, the recent one? No.

MR. WALDEN: You were not, OK.

There was a Senator that asked a question, I think, about the same statute, and she alleged that it was not being enforced.

J. Whiten

THE WITNESS: That's correct.

MR. WALDEN: You said just a moment ago that there has never been a report.

THE WITNESS: That is correct.

MR. WALDEN: Can you just unpack that a little bit? I'm not sure that I understand how that happens, that you have a law and no one complies with it and no one does anything about it.

THE WITNESS: That is not uncommon but, yeah, the 2007 law created this annual report. Again, the report has never happened.

You never really hear about the report. It would come up every year during the budget process, Office of Legislative Services would ask -- would ask Special Treasury, because Treasury was the one tasked with it, where is this report, what's the status?

For the first couple of years of that line of questioning, it was, like, oh, this is a very complicated report.

J. Whiten

We are getting all this information, we will have it maybe next year. And eventually the rationale shifted to something about protecting some confidential taxpayer information which, you know, I took that at face value, that may very well be the case. So that kind of ended that.

There was legislation introduced in 2016, passed by the assembly in 2016, died in the Senate, that aimed at fixing that problem by just inserting a clause into the original legislation, which is something like IRS privacy provisions notwithstanding, this report will happen, something like that.

I would like to see that legislation get passed and see if that could unlock the sort of magic formula to actually get this report done. Maybe it would; maybe it wouldn't.

I think the other part of that is that a lot of this information does already come into EDA, so maybe there

J. Whiten

is another way that EDA could be compelled to provide it in a different way than they do now.

Q. So my final area is an area that we haven't spoken about before, and it's a little bit more recent, which is the transfer and the sale of these EDA tax credits.

To the extent they are recent, there is very limited provisions in the EOA specifically geared towards regulating and overseeing that process. From your perspective and the policy research that you conducted and educated yourself in, can you speak a little bit to what would be ideal in terms of regulation and oversight of this process of companies being able to transfer and sell their tax credits?

A. So in my view, if you have got a broad based tax incentive program like Grow New Jersey or ERG, it should not include the ability to sell or transfer your tax credits, period.

If you want to make the case that

J. Whiten

early venture companies, tech startups, whatever, that aren't paying taxes yet need some assistance and they need to sell tax credits to help make their business grow, make that a different program, or make it a different piece of legislation or whatever actually targeted to those companies, because when you allow it in a broad based one, you are going to get some of those companies, but you're going to get multinational corporations that are sophisticated tax-dodging enterprises that are going to do the same thing.

It sort of goes against the purposes of the program, and it certainly raises a lot of fiscal oversight concerns.

Q. So from your perspective in terms of -- we are where we are, so companies are able to currently sell and transfer tax credits.

From your perspective, what's the best and most perfect method to regulate and oversee that? Would that be something that you believe should be incorporated

J. Whiten

into the legislative design in terms of process, and also -- or should that be within the purview of EDA to oversee, regulate and track that process of sale and transfer of tax credits?

A. My inclination would always be that any oversight is done through legislation and that the legislature is at least empowered to provide oversight over entities like EDA. I think there is probably good reason that EDA could do a lot of it itself, and, yeah, there is information that is out there about this. It's just not provided in a regular fashion.

Q. What are the dangers, from your perspective, of allowing companies to sell and transfer tax credits?

A. Well, it gets to, like, the reason that we are offering the company tax incentives. Is it so they can just sort of pad their bottom line and, you know, game a sophisticated tax incentive program, or is it so they can grow the new jobs and create

J. Whiten

the economic growth in some particular area?

I think there is a danger with a sale and transfer, again, in the broad base programs, of them just being used as additional tools for applicants and companies that may not really need the assistance. Including, and this was mentioned earlier, including nonprofits, which is, you know, sort of astounding.

Q. Mr. Whiten, I have no further questions, but I will open it to Mr. Chen or if anyone on the task force has any questions.

MR. WALDEN: Can we just stay with that and unpack it a little bit more? Because, again, you may help educate me at the early stage of this, that will keep me on track six months from now.

My understanding in the New Jersey program is not sale and transfer in the sense of, you can sell the credits, but you can't transfer the

J. Whiten

obligations, right? Am I right about that?

THE WITNESS: Right. That's correct.

MR. WALDEN: So let's just say I'm XYZ Corporation, and I decide I would rather have the money now, it is more meaningful to me now. The CEO could just take it home, obviously, or it could be a capital investment in the company that was meaningful, a new IT system, whatever.

If I sell the credit and I still keep the obligation intended to it, why is that necessarily dangerous, or is it necessarily dangerous?

THE WITNESS: I don't think it is necessarily dangerous. I just -- I don't think it is the rationale for the program. It's not the stated purpose to allow a company to make decisions about these tax credits and do whatever they want with it. The legislative intent is to grow jobs and create a

J. Whiten

stronger economy.

MR. WALDEN: Well, let me ask the question in a different way.

This may be a situation where there are no examples of it. But have there been examples since the program went live in 2013 where companies have either sold the credits and then gone under, sold the credits and just left the state and, you know, there should be clawbacks, but there are not clawbacks. When you were at NJPP, were there examples that came to your attention of those kinds of risks?

THE WITNESS: There were not, in terms of specific companies that fall into those categories, but that is certainly a risk. You know, there is -- every single way you can lose oversight and control over tax incentives.

Q. Just one last thought, based on that question. So, based on your knowledge, are you aware whether EDA is

J. Whiten

required to track when a company sells or transfers its credits, does that company need to get EDA approval to do so?

A. They have to get approval. Whether it is with EDA or Treasury, I'm not 100 percent certain. It is pretty easy to find that out after this. But they do have to get approval, and they have to, you know, apply for it, and it is, I assume, tracked because we do see information that comes out by request on that.

MR. WALDEN: So that's a great question. So to the extent that there is one risk that you could get the credit and then transfer it to an undesirable company, whatever that is, history of fraud, you know, and industry that the state doesn't need or want, their approval process at least cabins that risk assuming that in the application process someone is looking at that factor.

Do you know whether or not somebody is looking at that factor in

J. Whiten

deciding whether to approve or disapprove the applications to sell?

THE WITNESS: I believe that that kind of subjective factor is not a hard part of that approval process.

MS. PATEL: Thank you.

MR. CHEN: Maybe just, I don't know if you heard the last question I asked Mr. Goodman, but -- which focuses on how we reconcile trying to incentivize growth in distressed areas compared to what I'll call avoiding mission creep. Having such a diffuse not particular statement of your incentives that one size fits all which could then lead to uneven or even arbitrary application of a program.

And, you know, you have certainly spoken here about, by some metrics, for instance, the figures from some areas like Camden where you said 274,000 dollars, a cost per job as opposed to 78,000 statewide average, as opposed to even lower figures for other states

J. Whiten

with similar programs. That on its face seems very distressed.

On the other hand, we know there has been a lot of capital investment in Camden, which is a distressed area, and no one can argue the factories are good in and of itself.

So I guess I'm wondering, is there a way to explain this, to reconcile this? Is this an outgrowth, a part of the fact that we are trying to now measure success through the wrong lense? Because job growth may not have been -- it actually was not the metrics were changed. Job growth in and of itself is not the reasons primarily why these programs were approved in Camden. It was more capital investment.

So is the problem here the inability to articulate with clarity what the goal is, or is there something else going on here?

THE WITNESS: I think that is the

J. Whiten

core of the problem. EOA tried to get at targeting specific things and specific places, and the more targeting you can do the better. But when you're doing -- there is the policy process, and then there is sort of the political process. And those two things, as we see, across all sorts of different policy areas don't always mesh well together.

And so if you are thinking about how to target incentives, you start to target one part or one specific region or even one specific project. Your colleague down the aisle in the legislature, they want the same thing for their district, of course.

So that has been the political side of how this has unfolded over time, where the goals are not super clear from a statewide sort of planning and economic development perspective. And instead, it's a little bit of, everybody wants to get theirs.

J. Whiten

And so I think that's a problem that can only be solved during the political process and through the policies on --

MR. CHEN: That was not -- this situation was not EOA's doing.

THE WITNESS: No.

MR. CHEN: It was an error that was part of the legislation?

THE WITNESS: Yes.

MR. CHEN: And that's probably where we are going to find the source of the solution?

THE WITNESS: Yeah, I mean, it is a legislative solution. Doing legislative solutions involves engaging in the political process, which is messier.

MR. CHEN: I've heard that.

MR. WALDEN: Can I just ask -- sorry, did anybody else want to ask?

Just one more question, and I ask this only because you were essentially at ground zero and I wasn't. But when

J. Whiten

you were at NJPP, was there any work done to determine whether or not, let's say, special interests played a role in the creation of the statute and the choice, the legislative choices that were baked into the final version of the bill?

THE WITNESS: It wasn't a line of inquiry that we dug into because you can't really prove that thing with data. But I will say that, you know, there have been lots of other people who have presumed what kinds of interest may have been heavily engaged in. I think you can look at the data of what we have seen after EOA to draw some of those conclusions and say that that's a possibility.

MR. WALDEN: I only mention -- and maybe this is just off topic, but there is kind of a way to measure the kind of the cost effect a little bit if it turns out that the money is eventually going to places where kind

J. Whiten

of the power groups are. So that's the kind of thing that anecdotes are not helpful, data would be important. And I take it that nothing that NJPP did actually tried to measure what development companies, what lobbying firms were getting hired, nothing like that?

THE WITNESS: Correct.

MR. CHEN: Anything else?

MS. PATEL: Mr. Whiten, thank you very much. As we continue our in-depth examination, we may be calling on you again to continue this discussion on these topics, so thank you again.

THE WITNESS: Thank you all.

MR. CHEN: Well, this concludes our session for today. A transcript of today's session will be available on request, and we will explore other opportunities to make it available in even more convenient ways. We will work on that.

We plan to continue our

J. Whiten

proceeding in subsequent sessions between now and the beginning of June in various parts of the state, so we will have as much information as possible before the issuance of our final report.

At a later session we will invite members of the public to offer any relevant testimony. It's been a long day, and I appreciate that many members of the public may wish to share views. I assure you we will give you that opportunity to give us your views on the tax incentive programs and then to comment on the evidence that we have gathered so far and to further inform us about the direct impact of these programs on taxpayers and companies around the state. So we will make public announcements about those sessions using the same processes as we had for this one.

So for now, I thank you all very much for attending, and we are -- the

J. Whiten

task force is in recess.

(Time noted: 3:23 p.m.)

J. Whiten

INDEX:

J. Whiten

CERTIFICATE

I, MARY F. BOWMAN, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public do hereby certify:

The foregoing is a true record of the testimony given by in these proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 29th day of March, 2019.

____

MARY F. BOWMAN, RPR, CRR

C

O